2025-2026

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMBATTING ANTISEMITISM, HATE AND EXTREMISM (FIREARMS AND CUSTOMS LAWS) BILL 2026

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Home Affairs, the Hon Tony Burke MP)

COMBATTING ANTISEMITISM, HATE AND EXTREMISM (FIREARMS AND CUSTOMS LAWS) BILL 2026

GENERAL OUTLINE

1. The Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Bill 2026 (the Bill) represents a comprehensive package of reforms which will:

    - prohibit the importation of violent extremist material and goods depicting or containing prohibited symbols;
    - establish the national gun buyback scheme to purchase surplus and newly restricted firearms;
    - provide a framework for ensuring Commonwealth intelligence can inform firearms licence decision making in states and territories;
    - strengthen laws relating to importation of firearms and firearm-related goods at the border, and
    - criminalise using a carriage service to deal with firearms and explosives manufacture material or possessing or controlling this material through a carriage service.

2. These changes would implement the measures announced by the Government on 18 and 19 December 2025, following the National Cabinet's agreement on 15 December 2025 to eradicate antisemitism, hate, violence and terrorism, and strengthen gun laws across the nation.

3. The Bill contains three schedules of amendments:

    - Schedule 1 contains customs amendments related to prohibited material and technical amendments to support Schedule 2;
    - Schedule 2 contains amendments to firearms-related legislation; and
    - Schedule 3 allows for the making of transitional rules.

SCHEDULE 1 – Customs amendments

<u>Part 1 – Prohibited material</u>

4. Currently, the export and import controls available to prohibit the export or import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope. Objectionable goods are currently defined under regulation 3 and regulation 4A of the *Customs (Prohibited Exports) Regulations 1958* (the Prohibited Exports Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) respectively to cover a range of publications and goods. These include those that offend the standards of morality, decency and propriety generally accepted by reasonable adults, such as through their depiction of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena, or by promoting the misuse of specific drugs.

Objectionable goods also include publications or goods that promote, incite or instruct in matters of crime or violence or advocate the doing of a terrorist act. However, the definitions do not currently explicitly capture violent extremist material or prohibited symbols.

5. Under these controls, the export and import of objectionable goods is currently prohibited unless permission to export or import those goods is given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995*, or the goods are being exported or imported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).

6. The exemptions for being able to import or export these goods include for a religious, academic, educational, artistic, literary or scientific purpose, news reporting or law enforcement activities.

7. As a result of these amendments, Australian Border Force (ABF) officers would have the authority to seize these objectionable goods as a prohibited good and take appropriate enforcement action against the importer or exporter for breach of customs laws where an applicable exemption does not apply. These changes strengthen the ability of the ABF to prevent extremist material entering and leaving Australia, and reinforces Australia's commitment to combatting violent extremism and hate-based ideologies.

Part 2 – Powers relating to instruments

8. Part 2 of Schedule 1 makes technical amendments to section 4A of the *Customs Act 1901* (Customs Act) to clarify on the face of the legislation that forms and statements mentioned in section 4A, and instruments approving them, are not legislative instruments.

9. This Part also makes technical amendments to sections 50 and 112 of the Customs Act to clarify that regulations made for the purposes of sections 50 and 112 may confer on the Minister administering the Customs Act the power to make provision in relation to a matter by legislative instrument.

SCHEDULE 2 – Firearms amendments

Part 1 – National gun buyback

10. Part 1 of Schedule 2 proposes new provisions to establish a national gun buyback scheme to support governments to purchase surplus and newly restricted firearms. Consistent with the approach taken in the 1996 national gun buyback scheme, this scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the states (which is defined to include the Australian Capital Territory and the Northern Territory) to support their respective implementation of the national gun buyback scheme by way of reimbursements.

11. Under the mechanism in section 16 of the *Federal Financial Relations Act 2009* (the FFR Act), a Treasury Minister makes a determination under the FFR Act in relation to a State in respect of reimbursement of 'qualifying compensation' paid by the State. This measure provides that 'qualifying compensation' is compensation paid during the buyback period by a State under a compensation scheme set up by the State. It also provides that each State's compensation scheme is subject to the approval of the AFP Minister, ensuring

consistency, transparency and fairness in implementation of the national gun buyback scheme.

12. Part 1 of Schedule 2 also makes consequential amendments to the *Income Tax Assessment Act 1997* to amend the definition of ***firearms surrender arrangements*** to include the national firearms program. The amendments ensure that compensation payments a taxpayer receives under the national gun buyback scheme are not assessable for income tax purposes.

Part 2 – Firearms background checks

13. Part 2 of Schedule 2 would establish a framework that would enable the commencement of Commonwealth background checking. This background checking would support state and territory governments to identify and manage risks to security and the advancement of serious and organised crime, in connection with firearms licensing.

14. The framework would be facilitated by AusCheck, the Commonwealth background checking service, and would draw on intelligence held by the Australian Security Intelligence Organisation (ASIO) and the Australian Criminal Intelligence Commission (ACIC) concerning security and serious and organised crime, respectively. The framework would also enable AusCheck to facilitate a citizenship verification check in limited circumstances.

15. Consistent with all other AusCheck background checking frameworks, Part 2 of Schedule 2 would also provide a head of power for regulations to be made to prescribe a range of matters, such as the process, information requirements (including in relation to consent for checks) and types of advice given for these checks. In addition, the amendments contain proposed provisions for deemed consent in circumstances where a national or law enforcement agency requests a background check.

Amendments to the AusCheck Act relating to the facilitation of background checks for firearms related purposes

16. It is proposed that a firearms background check may consist of one or more of the following: a criminal intelligence assessment by the ACIC under section 54C of the *Australian Crime Commission Act 2002* (ACC Act), a security assessment by the ASIO under section 37 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and, in limited cases, an Australian citizenship check conducted by AusCheck.

17. Part 2 of Schedule 2 contemplates regulations would be required to operationalise this new scheme. This approach aligns with the current model of the AusCheck framework, and provides necessary flexibility for Commonwealth, state and territory agencies to collaborate on how the exact scheme and associated processes would work.

18. Part 2 of Schedule 2 provides that background checks may be conducted in connection with:

    - a decision under a law of a state or territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions)—this would ensure that background checks can be conducted to inform initial licence issuing decisions;

- a decision about whether to renew, revoke, vary or suspend a licence—this would cover both 'point-in-time' checks connected with an application to renew a licence, as well as the provision of advice at any time to inform the potential revocation, variation or suspension of a licence;

- in relation to an individual who holds a firearms licence, an application by a law enforcement agency or a national security agency—this would ensure that, in addition to the ability for a firearms background check to be undertaken at any time to inform the proactive consideration of whether to revoke, vary or suspend a licence as outlined above, a check may also be undertaken at the express request of such agencies, for example, where new information has arisen that raises questions about whether a person should continue to hold a licence.

19. Part 2 of Schedule 2 also proposes adjustments to the information handling and protection provisions in the AusCheck Act that would ensure information collected by AusCheck, which does not relate to the individual who is the subject of a firearms background check, would not be retained or made further use of by AusCheck. The exception will be passing the information along to national security agencies to provide context to inform an assessment of the individual's risk profile as it relates to national security or serious and organised crime.

20. Finally, Part 2 of Schedule 2 would also amend the AusCheck framework to deem consent in order for national security and law enforcement agencies to initiate proactive 'own motion' firearms background checks. The combination of the ability for AusCheck to facilitate 'point-in-time' checks at the firearms licence application and renewal stages, as well as proactive 'own motion' checks at the request of ASIO and the ACIC, as well other national security and law enforcement agencies, would provide a high degree of flexibility to manage firearms-related security and serious and organised crime risks. In particular, agencies would have the ability to trigger a reassessment of an existing firearms license holder if new information, intelligence or concerns arise outside of the formal application and renewal cycle.

Amendments to the criminal intelligence assessment framework under the ACC Act, including to enable ACIC to participate in the AusCheck firearms background check framework

21. Part 2 of Schedule 2 would amend the ACC Act to repeal Division 2A of Part II to the ACC Act and introduce a revised criminal intelligence assessment framework under a new Part III to the ACC Act. These amendments would deliver targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework, including to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks. Expanding the scope of ACIC's criminal intelligence assessment function to inform states and territories' firearms licensing decisions will play a critical role in preventing the use of firearms in connection with serious and organised crime.

22. Division 1 of the new Part III of the ACC Act would outline the core definitions of the framework and make changes to key definitions which underpin the effectiveness of a criminal intelligence assessment. The definition of a ***criminal intelligence assessment*** would be amended to clarify the purpose of an assessment and make it simpler for ACIC to provide an assessment. The amended definition focuses on whether taking prescribed administrative action would assist to prevent the advancement of serious and organised

crime, rather than whether the subject may commit a particular crime. This is complemented by the introduction of a new definition for ***serious and organised crime*** which would capture offences that may have been committed, may presently be being committed, or may be committed in the future.

23. Division 2 of the new Part III of the ACC Act would continue to enable the ACIC to support the security of Australia's aviation and maritime sectors by making and giving criminal intelligence assessments for AusCheck background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Importantly, the amendments would also expand the scope of the framework to enable the ACIC to conduct criminal intelligence assessments for a new AusCheck firearms background checking scheme. This would ensure that Commonwealth criminal intelligence holdings can be used to inform decision making on firearms licensing by firearms licensing authorities.

24. Amendments in Part 2 Schedule 2 would also make changes to improve ACIC's criminal intelligence assessment framework. It would introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks as prescribed in the Australian Crime Commission Regulations 2018. This recognises the pervasive nature of serious and organised crime and its infiltration across a growing variety of environments and sectors by enabling criminal intelligence assessments to be made for the purposes of background checks as appropriate.

25. Amendments in Part 2 Schedule 2 would also clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current or previous background check of a person for purposes related to the ACIC's criminal intelligence assessment functions. This clarifies that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than solely at the point of an application or renewal application.

26. Part 2 Schedule 2 would also amend the ACC Act to provide that the requirement to notify a person of an adverse criminal intelligence assessment in respect of that person does not apply to assessments in relation to firearms licensing decisions, and that merits review in the Administrative Review Tribunal (ART) is not available in relation to such assessments. It is not intended that these amendments would displace the ACIC's obligation to afford procedural fairness to the subject of a potential adverse assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ACC Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in particular circumstances. Consistent with existing requirements, notification requirements and the ability to apply for ART review of an adverse criminal intelligence assessment other than in the context of a firearms background check will remain. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC and the AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

27. Further amendments would clarify the use of automation for certain criminal intelligence assessments. Noting the high volume of criminal intelligence assessments made by the ACIC each year, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision-making (i.e. a computer) in certain circumstances. This is in circumstances where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Automated decision-making is only used in isolation where it is beneficial to the applicant, for example, where the result is confirming that it is appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

Amendments to the ASIO Act to support ASIO to participate in the AusCheck firearms background check framework

28. Under existing Part IV of the ASIO Act, ASIO can furnish security assessments in relation to, relevantly, the exercise of any power, or the performance of any function, in relation to certain decisions under a law of a state or territory relating to firearms licensing. This assessment may include recommendations, opinions, or advice on whether issuing or revoking a license is consistent with security requirements, or whether security considerations make such action necessary or desirable. Amendments in Part 2 of Schedule 2 would clarify that ASIO may provide a security assessment in relation to decisions about whether to renew, revoke, vary or suspend a firearms licence, in addition to decisions about issuing or revoking such licences.

29. Part 2 of Schedule 2 would amend the ASIO Act to provide that the requirement to notify a person of an adverse or qualified security assessment in respect of that person, does not apply to assessments in relation to firearms licensing decisions, and that merits review in the ART is not available for such assessments. It is not intended that these amendments would displace ASIO's obligation to afford procedural fairness to the subject of a potential adverse or qualified security assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ASIO Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in specified circumstances.

30. Part 2 of Schedule 2 would also amend the ASIO Act to enable specified assessment action to be automated through use of a computer program. This would allow ASIO to use automated decision-making in circumstances specified in an instrument made by the Minister.

31. As with the corresponding amendments to the ACC Act, the amendments to Part IV of the ASIO Act would limit the potential disclosure of sensitive intelligence information and reflects the fact that holding a firearms license is a privilege rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse or qualified security assessment by ASIO and an AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

Amendments to the Crimes Act to enable spent, pardoned and quashed conviction information to be used by ASIO, the ACIC and intelligence or security agencies for specified purposes

32. Divisions 2 and 3 of Part VIIC of the *Crimes Act 1914* (Crimes Act) regulate the disclosure, filing, recording and use of information concerning pardoned, quashed and spent convictions for Commonwealth and territory offences.

33. Part 2 of Schedule 2 would amend the Crimes Act to provide that Division 2 (pardons and quashed convictions) does not apply in relation to:

    - the disclosure of information to or by ASIO;
    - the filing or recording of information that comes into the possession of ASIO; or
    - the use by ASIO of information;

    for the purposes of the performance of ASIO's functions.

34. Part 2 of Schedule 2 would also amend the Crimes Act to provide that Divisions 2 (pardons and quashed convictions) and 3 (spent convictions) of Part VIIC do not apply in relation to:

    - the disclosure of information to or by the ACIC;
    - the filing or recording of information that comes into the possession of the ACIC; or
    - the use by the ACIC of information;

for the purposes of the ACIC's criminal intelligence assessment function.

35. Part 2 of Schedule 2 would further amend the Crimes Act to provide that:

    - ASIO may use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, or information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of its functions or the exercise of its powers
    - the ACIC may use or disclose such information in the performance of the ACIC's criminal intelligence assessment function, and
    - an intelligence or security agency may use or disclose such information for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or perform services for, the agency or a member of the agency.

36. These amendments would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by these agencies for these specified purposes, despite any restrictions in state or territory legislation that would otherwise apply. The amendments expressly give rise to an inconsistency between the Commonwealth law and state and territory laws, such that the Commonwealth law would prevail to the extent of

the inconsistency. The amendments would enable ASIO, the ACIC and intelligence and security agencies to use and disclose information that it has obtained for the specific purposes outlined in the Bill. By limiting these authorisations to use and disclosure by these agencies for specified purposes, the protections of Part VIIC would otherwise be maintained.

37. The ability to use, record and disclose pardoned, quashed and spent conviction information is important for intelligence and personnel security purposes. Depending on the reasons for the pardoning or quashing of a conviction, information about that conviction may remain relevant from a security or criminal intelligence, or personnel security perspective. For example:

    - in a circumstance where a conviction for terrorism or serious and organised crime was quashed because of a legal or procedural error, rather than fresh evidence indicating innocence, the nature of the person's conduct may remain relevant for intelligence purposes, including for the purpose of considering whether the person should be granted or hold a firearms licence, or

    - in a circumstance where a person was convicted for serious fraud, and that conviction is now spent, the fact of that spent conviction may remain relevant when considering whether that person should be employed in or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

Consequential amendments in other Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework

38. Part 2 of Schedule 2 would make consequential amendments to the following Commonwealth Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework:

    - *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act);
    - *Administrative Review Tribunal Act 2024* (ART Act);
    - AusCheck Act;
    - *AusCheck Regulations 2017* (AusCheck Regulations)*;*
    - *Australian Border Force Act 2015* (ABF Act);
    - ATS Act;
    - *Aviation Transport Security Regulations 2005* (ATS Regulations);
    - Crimes Act;
    - MTOFS Act;
    - *Maritime Transport and Offshore Facilities Security Regulations 2003*; (MTOFS Regulations)

- *Surveillance Devices Act 2004* (SD Act); and

- *Telecommunications (Interception and Access) Act 1979* (TIA Act).

39. Amendments to the ADJR Act, ART Act, AusCheck Act, AusCheck Regulations, ATS Act, ATS Regulations, MTOFS Act, and the MTOFS Regulations would ensure that definitions and references in these Acts to a criminal intelligence assessment conducted by the ACIC under current Part II Division 2A of the ACC Act are replaced with the relevant definitions and references in new Part III. This would enable the operationalisation of the new criminal intelligence assessment function by ensuring that the relevant Commonwealth frameworks are appropriately aligned.

40. Further amendments to the AusCheck Regulations would clarify that the specified regulations apply:

    - in relation to an application for a background check made on or after the commencement of regulation 45; and

    - an application for a background check made before the commencement of regulation 45 that had not been completed before that commencement.

41. In relation to a background check commenced but not completed before the commencement of regulation 45, amendments ensure that the specified regulations apply as if a reference to an adverse criminal intelligence assessment included a reference to a high-risk criminal intelligence assessment. This threshold will subsequently be removed by the consequential amendments in this Bill, in order to align with the broader changes relating to the criminal intelligence assessment provisions in the ACC Act.

42. Further amendments to the ATS Regulations and the MTOFS Regulations would clarify the application of the specified regulations in relation to:

    - an application for a background check, an issue of an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC), suspension of an ASIC or MSIC, issue of a disqualifying notice of a MSIC apply on or after the commencement of Part 2 of Schedule 2 to the Bill.

    - the cancellation of an ASIC, visitor identification card (VIC), temporary aircrew card (TAC) or MSIC on or after the commencement of that Part, whether the ASIC, VIC, TAC or MSIC was issued before, on or after that commencement Part 2 of Schedule 2 to the Bill.

43. Amendments to the ABF Act, Crimes Act, SD Act, and TIA Act would enable the ACIC to consider and use more information when making a criminal intelligence assessment. This includes:

    - information obtained by the ABF using their own powers under the Customs Act;

    - information gathered from materials seized under a search warrant;

    - information lawfully obtained from the use of a surveillance device or access to data under a computer access warrant;

- lawfully intercepted information;
- lawfully accessed information; and
- telecommunications data.

44. Amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the performance of the ACIC's criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

45. Amendments to the SD Act and the TIA Act would enable Commonwealth, state and territory agencies to disclose sensitive information and documents, which may include personal information, to the ACIC for the purpose of making a criminal intelligence assessment. Amendments to the SD Act and the TIA Act would also enable the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. Further amendments to the TIA Act would enable an authorised officer of the ACIC to authorise disclosure of telecommunications data for the purpose of making a criminal intelligence assessment.

Part 3 – Transmission of firearms information and other information to ACIC

46. Part 3 of Schedule 2 establishes a new information sharing and disclosure framework in the Customs Act to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs, including the ABF, to the ACIC which administers the National Firearms Register (NFR) and the National Criminal Intelligence System (NCIS).

47. Part 3 of Schedule 2 would define "Firearms information" subject to disclosure as information relating to firearms or other goods relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors), such as:

    a) information relating to the import or export of the firearms or other goods;
    b) information relating to licences or permits (however described) for the firearms or other goods;
    c) personal information or other information in relation to one or more persons.

Part 4 – Public safety tests for firearms and weapons

48. The importation of firearms and certain weapons into Australia is primarily governed under Schedules 6 and 13 to the Prohibited Imports Regulations. Part 2 of each respective schedule categorises those firearms and weapons to which the Prohibited Imports Regulations apply. Importation of a firearm or weapon of a kind mentioned in Schedule 6 or 13 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for the category of firearm or weapon in the schedule.

49. The proposed amendments would establish a new public safety test for firearms and weapons. These tests would be applicable by discretion of the Minister administering the Prohibited Imports Regulations to assess the importation of goods to which regulations 4F and 4H apply (firearms and certain weapons) and consider whether the importation of the firearm or weapon poses a risk to the health, safety or security of the public or a segment of the public, which includes emergency services personnel. The Minister administering the Prohibited Imports Regulations would be required to make rules, by legislative instrument, for and in relation to whether the importation of a firearm or a weapon poses a risk to the health, safety or security of the public or a segment of the public. That Minister may also, at any time, require the person importing the good to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the good against the public safety tests.

50. The intent of these amendments is to provide the Minister administering the Prohibited Imports Regulations with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This would ensure that, while certain firearms and weapons may be legal to possess and use domestically, where they may not be suitable for the intended use within the community there is an ability to refuse import permission.

Part 5 – Importation of firearms

51. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 to the Prohibited Imports Regulations classifies all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulations unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

52. The proposed amendments to Schedule 6 requirements would tighten import controls on the following firearms and related articles where elevated risks have been identified:

    - Assisted repeating action and straight pull repeating action firearms;
    - Firearms which are operated using belt-fed ammunition;
    - Magazines with a capacity of more than 30 rounds;
    - Frames and receivers;
    - Skirmish markers;
    - Sound suppressors and;
    - Speed loaders.

53. The proposed amendments to the Prohibited Imports Regulations would introduce definitions for assisted repeating action and straight pull repeating action firearms and would impose import requirements for these firearms in line with existing requirements for the importation of semi-automatic firearms. Import permission

requirements would be introduced for firearms that can be operated using belt-fed ammunition in line with existing requirements for the importation of firearms that have a fully automatic firing capability. Importation of magazines with a capacity of more than 30 rounds for any firearm would be restricted and importation could only occur where the importation complies with one of the prescribed tests.

54. Import permission would also be required for speed loaders, devices used to increase the speed at which a firearm can be reloaded, recognising their risk to community safety. New table item 13B of Part 2 of Schedule 6 would ensure import permission can be provided for certain reasons, including government, law enforcement, and sports shooting.

55. New identification and serial number requirements would also be applied to frames and receivers, in line with the existing requirements for complete firearms. Serialisation and identification would also be a requirement for the importation of sound suppressors. To meet the identification requirements for frames, receivers and sound suppressors, these goods would be subject to visual inspection upon importation – as per current requirements for firearms.

56. The proposed amendments to the Prohibited Imports Regulations would introduce a new definition for ***skirmish markers,*** which encompass goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters. These items would be regulated as ***firearms*** and be subject to the same serial number, identification and safety testing requirements, as all other firearms imported into Australia.

57. The official purposes test, when complied with, grants import permission for a range of articles in Schedule 6 of the Prohibited Imports Regulations. Proposed amendments to the specified person test would introduce an additional requirement that the importer has produced evidence that they are an Australian citizen. This recognises that, for Australia Citizens that applied, the citizenship application process provides an additional layer of community protection to complement fit and proper purposes test for firearms licences conducted by state and territory firearms registries. This amendment relates only to importation.

58. Finally, Part 5 of Schedule 2 will bring handguns under Commonwealth import permission control. The "dealer test-category H article" test in Part 1 of Schedule 6 of the Prohibited Imports Regulations would be replaced with a new "handgun test". Handguns have limited legitimate uses in the community and are generally limited to sports shooters, security guards and law enforcement. These items are a desired commodity for serious and organised crime, and those seeking illicit firearms from the black market. These amendments will centralise the assessment process and provide critical oversight over these firearms.

<u>Part 6 – Approved forms for police certification for firearms imports</u>

59. The amendments contained in Part 6 of Schedule 2 would amend the police certification tests to remove the use of open-ended permits for the importation of firearms and weapons under the Prohibited Imports Regulations. The importation of firearms and weapons could still be obtained through the use of an individual permit for each import.

60. Firearms that can be imported on compliance with the police certification test require the importer to be given a statement, in an approved form, by a relevant police representative to the effect that the importer holds a licence or authorisation according to the law of the relevant state or territory to possess the article (or that a licence or authorisation is not required). This is currently facilitated through approved forms which provide ongoing import permission for firearms for a given period of time. The proposed amendments to the police certification test would invalidate open ended approved forms on or after the commencement of the Bill. Importers relying on these forms would no longer have import permission. New approved forms detailing specific firearms and related goods (parts, ammunition, etc) for import would need to be obtained for the purposes of complying with the police certification test in Schedule 6.

61. The proposed amendments to the Schedule 6 police certification test would be replicated in the police certification test for weapons in Schedule 13 to the Prohibited Imports Regulations. It would render a statement made in approved form for the open-ended import of some weapons would have no effect in relation to the importation of a good on or after the day the Bill commences.

62. Following commencement, importers would be required to seek import permission for each import. Importers would not be required to individually apply for each item in an import consignment.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

63. Part 7 of Schedule 2 would amend the *Criminal Code Act 1995* (Criminal Code) and *Crimes Act 1914* (Crimes Act) to create new offences for using a carriage service to access, provide access, possess, or control, material that instructs, supports, or facilitates the manufacture or modification of a firearm, firearm accessory, firearm part, firearm magazine, or an explosive or other lethal device.

SCHEDULE 3 – Transitional rules

64. Schedule 3 would allow the Minister administering the *Australian Federal Police Act 1979*, the Minister administering the ART Act, or the Minister administering Part XII of the Customs Act, to make rules prescribing transitional matters relating to the amendments or repeals made by the Bill.

FINANCIAL IMPACT

65. The total indicative cost of the national gun buyback scheme is still to be determined, but it is likely to be significant. Costs will be appropriated out of the Federation Reform Fund and Consolidated Revenue Fund, as appropriate.

66. The costs of the national gun buyback scheme will be funded on a cost sharing basis, with the Commonwealth sharing the costs of the scheme with the states and territories, through reimbursements.

67. The majority of the payments are expected to be made in the 2026-27 financial year.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Bill 2026

1. This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

2. The Bill represents a comprehensive package of reforms which will:

- prohibit the importation of violent extremist material and goods depicting or containing prohibited symbols.
- establish the national gun buyback scheme to purchase surplus and newly restricted firearms
- provide a framework for ensuring Commonwealth intelligence can inform firearms licence decision making in states and territories
- strengthen laws relating to importation of firearms and firearm-related goods at the border, and
- criminalise using a carriage service to deal with firearms and explosives manufacture material or possessing or controlling this material through a carriage service.

3. These changes would implement the measures announced by the Government on 18 and 19 December 2025, following the National Cabinet's agreement on 15 December 2025 to eradicate antisemitism, hate, violence and terrorism, and strengthen gun laws across the nation.

4. The Bill contains three schedules of amendments:

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SCHEDULE 1 – Customs amendments

<u>Part 1 – Prohibited material</u>

5. Currently, the export and import controls available to prohibit the export or import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope. Objectionable goods are

currently defined under regulation 3 and regulation 4A of the *Customs (Prohibited Exports) Regulations 1958* (the Prohibited Exports Regulations) and the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations) respectively to cover a range of publications and goods. These include those that offend the standards of morality, decency and propriety generally accepted by reasonable adults, such as through their depiction of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena, or by promoting the misuse of specific drugs. Objectionable goods also include publications or goods that promote, incite or instruct in matters of crime or violence or advocate the doing of a terrorist act. However, the definitions do not currently explicitly capture violent extremist material or prohibited symbols.

2. The proposed amendments would insert new subregulation 3(2AB) into the Prohibited Exports Regulations and new subregulation 4A(1AB) into the Prohibited Imports Regulations which amends the definition of objectionable goods to include goods that:

- are or contain violent extremist material (within the meaning of the *Criminal Code Act 1995* (the Criminal Code)); or

- are or depict or contain prohibited symbols (within the meaning of the Criminal Code).

6. These amendments would ensure that export and import prohibitions covering objectionable goods capture violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols. The violent extremist material and prohibited symbols that are subject to export or import control are physical things (for example a computer, flag, mobile phone or other electronic devices that hold these things) as defined under those terms in the Criminal Code.

7. Under these controls, the export and import of objectionable goods is currently prohibited unless permission to export or import those goods is given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act* 1995, or the goods are being exported or imported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).

8. The exemptions for being able to import or export these goods include for a religious, academic, educational, artistic, literary or scientific purpose, or for the purposes of making a news report or for law enforcement purposes.

9. As a result of these amendments, Australian Border Force (ABF) officers would have the authority to seize these objectionable goods as a prohibited good and take appropriate enforcement action against the importer or exporter for breach of customs laws where an applicable exemption does not apply. These changes strengthen the ability of the ABF to prevent extremist material entering and leaving Australia, and reinforces Australia's commitment to combatting violent extremism and hate-based ideologies.

10. Section 233 of the *Customs Act 1901* (the Customs Act) also makes it an offence to export or import any prohibited goods punishable upon conviction with a penalty not exceeding 3 times the value of the goods or 1,000 penalty units, whichever is greater. An offence under this section is a strict liability offence and does not require a fault element for any of the physical elements of the offence. Section 233BAA of the Customs Act

provides for a further special offence with increased penalties relating to the import or export of tier 1 goods. A person commits an offence under this section if they intentionally export or import a prohibited tier 1 good and are reckless as to that fact with a penalty of imprisonment for 5 years or 1,000 penalty unites, or both.

11. Schedule 7 to the Customs Regulation provides for a table of drugs and other goods classified as tier 1 goods. Proposed amendments to table item 22 would have the effect that a good that is an objectionable good but is not an item of child abuse material is prescribed as a tier 1 good. This change would remove the current reference to "commercial quantity of objectionable goods" and would operate to capture all goods that are objectionable goods, including, to the extent not covered by an exception, goods that are violent extremist material or prohibited symbols, and goods that contain violent extremist material or prohibited symbols, irrespective of their quantity.

12. These proposed changes would expand the range of penalties that can be imposed by a court where a person exports or imports an objectionable good without the requisite permission or having met an exemption. Advancements in technology and information storage have also rendered the commercial quantity condition obsolete, with modern storage devices capable of storing large volumes of objectionable material, however under existing legislation each individual device is considered one individual good. The existing strict liability offence under section 233 remains available where offending only meets the physical elements of the offence. A term of imprisonment up to 5 years for offences under section 233AB will be available where appropriate for the most serious offending.

Part 2 – Powers relating to instruments

13. Part 2 of Schedule 1 makes technical amendments to section 4A of the *Customs Act 1901* (Customs Act) to clarify on the face of the legislation that forms and statements mentioned in section 4A, and instruments approving them, are not legislative instruments.

14. This Part also makes technical amendments to sections 50 and 112 of the Customs Act to clarify that regulations made for the purposes of sections 50 and 112 may confer on the Minister administering the Customs Act the power to make provision in relation to a matter by legislative instrument.

SCHEDULE 2 – Firearms amendments

Part 1 – National gun buyback

15. Part 1 of Schedule 2 proposes new provisions to establish a national gun buyback scheme to support governments to purchase surplus and newly restricted firearms. Consistent with the approach taken in the 1996 national gun buyback scheme, this scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the states (which is defined to include the Australian Capital Territory and the Northern Territory) to support their respective implementation of the national gun buyback scheme by way of reimbursements.

16. Under the mechanism in section 16 of the *Federal Financial Relations Act 2009* (the FFR Act), a Treasury Minister makes a determination under the FFR Act in relation to a State in respect of reimbursement of 'qualifying compensation' paid by the State. This measure

provides that 'qualifying compensation' is compensation paid during the buyback period by a State under a compensation scheme set up by the State. It also provides that each State's compensation scheme is subject to the approval of the AFP Minister, ensuring consistency, transparency and fairness in implementation of the national gun buyback scheme.

17. Part 1 of Schedule 2 also makes consequential amendments to the *Income Tax Assessment Act 1997* to amend the definition of ***firearms surrender arrangements*** to include the national firearms program. The amendments ensure that compensation payments a taxpayer receives under the national gun buyback scheme are not assessable for income tax purposes.

Part 2 – Firearms background checks

18. Part 2 of Schedule 2 would establish a framework that would enable the commencement of Commonwealth background checking. This background checking would support state and territory governments to identify and manage risks to security and the advancement of serious and organised crime, in connection with firearms licensing.

19. The framework would be facilitated by AusCheck, the Commonwealth background checking service, and would draw on intelligence held by the Australian Security Intelligence Organisation (ASIO) and the Australian Criminal Intelligence Commission (ACIC) concerning security and serious and organised crime, respectively. The framework would also enable AusCheck to facilitate a citizenship verification check in limited circumstances.

20. Consistent with all other AusCheck background checking frameworks, Part 2 of Schedule 2 would also provide a head of power for regulations to be made to prescribe a range of matters, such as the process, information requirements (including in relation to consent for checks) and types of advice given for these checks. In addition, the amendments contain proposed provisions for deemed consent in circumstances where a national or law enforcement agency requests a background check.

Amendments to the AusCheck Act relating to the facilitation of background checks for firearms related purposes

21. Part 2 of Schedule 4 would amend the AusCheck Act to enable regulations to be made to establish a new Commonwealth background checking scheme. It is proposed that AusCheck, the national background checking authority administered by the Department of Home Affairs would facilitate a firearms background check at the request of State and Territory firearms licencing authorities for individuals who are applying for, or renewing, their firearms license.

22. It is proposed that a firearms background check may consist of one or more of the following: a criminal intelligence assessment by the ACIC under section 54C of the *Australian Crime Commission Act 2002* (ACC Act), a security assessment by the ASIO under section 37 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and, in limited cases, an Australian citizenship check conducted by AusCheck.

23. Part 2 of Schedule 2 contemplates regulations would be required to operationalise this new scheme. Accordingly, the amendments contain a head of power that enables

regulations to be made to cover the breadth of operational issues, such as the form of an application, the information required to be contained in an application for a firearms background check (including in relation to consent for the check), the manner of conducting a check, criteria against which applications are assessed, forms of advice to be given back to applicants, etc. This approach aligns with the current model of the AusCheck framework, and provides necessary flexibility for Commonwealth, state and territory agencies to collaborate on how the exact scheme and associated processes would work.

24. Part 2 of Schedule 2 provides that background checks may be conducted in connection with:

    - a decision under a law of a state or territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions)—this would ensure that background checks can be conducted to inform initial licence issuing decisions

    - a decision about whether to renew, revoke, vary or suspend a licence—this would cover both 'point-in-time' checks connected with an application to renew a licence, as well as the provision of advice at any time to inform the potential revocation, variation or suspension of a licence

    - in relation to an individual who holds a firearms licence, an application by a law enforcement agency or a national security agency—this would ensure that, in addition to the ability for a firearms background check to be undertaken at any time to inform the proactive consideration of whether to revoke, vary or suspend a licence as outlined above, a check may also be undertaken at the express request of such agencies, for example, where new information has arisen that raises questions about whether a person should continue to hold a licence.

25. Part 2 of Schedule 2 also proposes adjustments to the information handling and protection provisions in the AusCheck Act that would ensure information collected by AusCheck, which does not relate to the individual who is the subject of a firearms background check, would not be retained or made further use of by AusCheck. The exception will be passing the information along to national security agencies to provide context to inform an assessment of the individual's risk profile as it relates to national security or serious and organised crime. The proposed amendments to information handling and protection provisions in the AusCheck Act are necessary given that firearms background checks would likely require the collection of an array of personal information about an individual and their family or associates.

26. Finally, Part 2 of Schedule 2 would also amend the AusCheck framework to deem consent in order for national security and law enforcement agencies to initiate proactive 'own motion' firearms background checks. The combination of the ability for AusCheck to facilitate 'point-in-time' checks at the firearms licence application and renewal stages, as well as proactive 'own motion' checks at the request of ASIO and the ACIC, as well other national security and law enforcement agencies, would provide a high degree of flexibility to manage firearms-related security and serious and organised crime risks. In particular, agencies would have the ability to trigger a reassessment of an existing firearms license holder if new information, intelligence or concerns arise outside of the formal application and renewal cycle, including in situations where, at the point in time

where the amendments in this Part of this Schedule commence, someone already holds an active firearms licence under State or Territory firearms legislation.

Amendments to the criminal intelligence assessment framework under the ACC Act, including to enable ACIC to participate in the AusCheck firearms background check framework

27. Part 2 of Schedule 2 would amend the ACC Act to repeal Division 2A of Part II of the ACC Act and introduce a revised criminal intelligence assessment framework under a new Part III of the ACC Act. These amendments would deliver targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework, including to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks. Expanding the scope of ACIC's criminal intelligence assessment function to inform states and territories' firearms licensing decisions will play a critical role in preventing the use of firearms in connection with serious and organised crime.

28. Division 1 of the new Part III of the ACC Act would outline the core definitions of the framework and make changes to key definitions which underpin the effectiveness of a criminal intelligence assessment. The definition of a ***criminal intelligence assessment*** would be amended to clarify the purpose of an assessment and make it simpler for ACIC to provide an assessment. The amended definition focuses on whether taking prescribed administrative action would assist to prevent the advancement of serious and organised crime, rather than whether the subject may commit a particular crime. This is complemented by the introduction of a new definition for ***serious and organised crime*** which would capture offences that may have been committed, may presently be being committed, or may be committed in the future.

29. Division 2 of the new Part III of the ACC Act would continue to enable the ACIC to support the security of Australia's aviation and maritime sectors by making and giving criminal intelligence assessments for AusCheck background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Importantly, the amendments would also expand the scope of the framework to enable the ACIC to conduct criminal intelligence assessments for a new AusCheck firearms background checking scheme. This would ensure that Commonwealth criminal intelligence holdings can be used to inform decision making on firearms licensing by firearms licensing authorities.

30. Amendments in Part 2 Schedule 2 would also make changes to improve ACIC's criminal intelligence assessment framework. It would introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks as prescribed in the *Australian Crime Commission Regulations 2018*. This recognises the pervasive nature of serious and organised crime and its infiltration across a growing variety of environments and sectors by enabling criminal intelligence assessments to be made for the purposes of background checks as appropriate.

31. Amendments in Part 2 Schedule 2 would also clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current or previous background check of a person for purposes related to the ACIC's criminal intelligence assessment functions. This clarifies that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of

information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than solely at the point of an application or renewal application.

32. Part 2 Schedule 2 would also amend the ACC Act to provide that the requirement to notify a person of an adverse criminal intelligence assessment in respect of that person does not apply to assessments in relation to firearms licensing decisions, and that merits review in the Administrative Review Tribunal (ART) is not available in relation to such assessments. It is not intended that these amendments would displace the ACIC's obligation to afford procedural fairness to the subject of a potential adverse assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ACC Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in particular circumstances. Consistent with existing requirements, notification requirements and the ability to apply for ART review of an adverse criminal intelligence assessment other than in the context of a firearms background check will remain. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC and the AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

33. Further amendments would clarify the use of automation for certain criminal intelligence assessments. Noting the high volume of criminal intelligence assessments made by the ACIC each year, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision-making (i.e. a computer) in certain circumstances. This is in circumstances where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Automated decision-making is only used in isolation where it is beneficial to the applicant, for example, where the result is confirming that it is appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

Amendments to the ASIO Act to support ASIO to participate in the AusCheck firearms background check framework

34. Under existing Part IV of the ASIO Act, ASIO can furnish security assessments in relation to, relevantly, the exercise of any power, or the performance of any function, in relation to certain decisions under a law of a state or territory relating to firearms licensing. This assessment may include recommendations, opinions, or advice on whether issuing or revoking a license is consistent with security requirements, or whether security considerations make such action necessary or desirable. Amendments in Part 2 of Schedule 2 would clarify that ASIO may provide a security assessment in relation to decisions about whether to renew, revoke, vary or suspend a firearms licence, in addition to decisions about issuing or revoking such licences.

35. Part 2 of Schedule 2 would amend the ASIO Act to provide that the requirement to notify a person of an adverse or qualified security assessment in respect of that person, does not apply to assessments in relation to firearms licensing decisions, and that merits review in the ART is not available for such assessments. It is not intended that these amendments would displace ASIO's obligation to afford procedural fairness to the subject of a

potential adverse or qualified security assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ASIO Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in specified circumstances.

36. Part 2 of Schedule 2 would also amend the ASIO Act to enable specified assessment action to be automated through use of a computer program. This would allow ASIO to use automated decision-making in circumstances specified in an instrument made by the Minister.

37. As with the corresponding amendments to the ACC Act, the amendments to Part IV of the ASIO Act would limit the potential disclosure of sensitive intelligence information and reflects the fact that holding a firearms license is a privilege rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse or qualified security assessment by ASIO and an AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

Amendments to the Crimes Act to enable spent, pardoned and quashed conviction information to be used by ASIO, the ACIC and intelligence or security agencies for specified purposes

38. Divisions 2 and 3 of Part VIIC of the *Crimes Act 1914* (Crimes Act) regulate the disclosure, filing, recording and use of information concerning pardoned, quashed and spent convictions for Commonwealth and territory offences.

39. Part 2 of Schedule 2 would amend the Crimes Act to provide that Division 2 (pardons and quashed convictions) does not apply in relation to:

    - the disclosure of information to or by ASIO
    - the filing or recording of information that comes into the possession of ASIO, or
    - the use by ASIO of information,

    for the purposes of the performance of ASIO's functions.

40. Part 2 of Schedule 2 would also amend the Crimes Act to provide that Divisions 2 (pardons and quashed convictions) and 3 (spent convictions) of Part VIIC do not apply in relation to:

    - the disclosure of information to or by the ACIC
    - the filing or recording of information that comes into the possession of the ACIC, or
    - the use by the ACIC of information,

for the purposes of the ACIC's criminal intelligence assessment function.

41. Part 2 of Schedule 2 would further amend the Crimes Act to provide that:

- ASIO may use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, or information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of its functions or the exercise of its powers

- the ACIC may use or disclose such information in the performance of the ACIC's criminal intelligence assessment function, and

- an intelligence or security agency may use or disclose such information for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or perform services for, the agency or a member of the agency.

42. These amendments would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by these agencies for these specified purposes, despite any restrictions in state or territory legislation that would otherwise apply. The amendments expressly give rise to an inconsistency between the Commonwealth law and state and territory laws, such that the Commonwealth law would prevail to the extent of the inconsistency. The amendments would enable ASIO, the ACIC and intelligence and security agencies to use and disclose information that it has obtained for the specific purposes outlined in the Bill. By limiting these authorisations to use and disclosure by these agencies for specified purposes, the protections of Part VIIC would otherwise be maintained.

43. The ability to use, record and disclose pardoned, quashed and spent conviction information is important for intelligence and personnel security purposes. Depending on the reasons for the pardoning or quashing of a conviction, information about that conviction may remain relevant from a security or criminal intelligence, or personnel security perspective. For example:

- in a circumstance where a conviction for terrorism or serious and organised crime was quashed because of a legal or procedural error, rather than fresh evidence indicating innocence, the nature of the person's conduct may remain relevant for intelligence purposes, including for the purpose of considering whether the person should be granted or hold a firearms licence, or

- in a circumstance where a person was convicted for serious fraud, and that conviction is now spent, the fact of that spent conviction may remain relevant when considering whether that person should be employed in or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

Consequential amendments in other Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework

44. Part 2 of Schedule 2 would make consequential amendments to the following Commonwealth Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework:

- *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act);

- *Administrative Review Tribunal Act 2024* (ART Act);
- AusCheck Act;
- *AusCheck Regulations 2017* (AusCheck Regulations)*;*
- *Australian Border Force Act 2015* (ABF Act);
- ATS Act;
- *Aviation Transport Security Regulations 2005* (ATS Regulations);
- Crimes Act;
- MTOFS Act;
- Maritime Transport and Offshore Facilities Security Regulations 2003; (MTOFS Regulations)
- *Surveillance Devices Act 2004* (SD Act); and
- *Telecommunications (Interception and Access) Act 1979* (TIA Act).

45. Amendments to the ADJR Act, ART Act, AusCheck Act, AusCheck Regulations, ATS Act, ATS Regulations, MTOFS Act, and the MTOFS Regulations would ensure that definitions and references in these instruments to a criminal intelligence assessment conducted by the ACIC under current Part II Division 2A of the ACC Act are replaced with the relevant definitions and references in new Part III. This would enable the operationalisation of the new criminal intelligence assessment function by ensuring that the relevant Commonwealth frameworks are appropriately aligned.

46. Further amendments to the AusCheck Regulations would clarify that the specified regulations apply:

    - in relation to an application for a background check made on or after the commencement of regulation 45; and
    - an application for a background check made before the commencement of regulation 45 that had not been completed before that commencement.

47. In relation to a background check commenced but not completed before the commencement of regulation 45, amendments ensure that the specified regulations apply as if a reference to an adverse criminal intelligence assessment included a reference to a high-risk criminal intelligence assessment. This threshold will subsequently be removed by the consequential amendments in this Bill, in order to align with the broader changes relating to the criminal intelligence assessment provisions in the ACC Act.

48. Further amendments to the ATS Regulations and the MTOFS Regulations would clarify the application of the specified regulations in relation to:

- an application for a background check, an issue of an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC), suspension of an ASIC or MSIC, issue of a disqualifying notice of a MSIC apply on or after the commencement of Part 2 of Schedule 2 to the Bill.

- the cancellation of an ASIC, visitor identification card (VIC), temporary aircrew card (TAC) or MSIC on or after the commencement of that Part, whether the ASIC, VIC, TAC or MSIC was issued before, on or after that commencement Part 2 of Schedule 2 to the Bill.

49. Amendments to the ABF Act, Crimes Act, SD Act, and TIA Act would enable the ACIC to consider and use more information when making a criminal intelligence assessment. This includes:

    - information obtained by the ABF using their own powers under the Customs Act

    - information gathered from materials seized under a search warrant

    - information lawfully obtained from the use of a surveillance device or access to data under a computer access warrant

    - lawfully intercepted information

    - lawfully accessed information, and

    - telecommunications data.

50. Amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the performance of the ACIC's criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

51. Amendments to the SD Act and the TIA Act would enable Commonwealth, state and territory agencies to disclose sensitive information and documents, which may include personal information, to the ACIC for the purpose of making a criminal intelligence assessment. Amendments to the SD Act and the TIA Act would also enable the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. Further amendments to the TIA Act would enable an authorised officer of the ACIC to authorise disclosure of telecommunications data for the purpose of making a criminal intelligence assessment.

<u>Part 3 – Transmission of firearms information and other information to ACIC</u>

52. Part 3 of Schedule 2 establishes a new information sharing and disclosure framework to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs, including the ABF, to the ACIC which administers the National Firearms Register (NFR) and the National Criminal Intelligence System (NCIS).

53. Part 3 of Schedule 2 would define "Firearms information" subject to disclosure as information relating to firearms or other goods relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors), and that such information may include:

    - information relating to the import or export of the firearms or other goods;
    - information relating to licences or permits (however described) for the firearms or other goods;
    - personal information or other information in relation to one or more persons.

54. Additional information that may be prescribed by the regulations to be able to be disclosed under section 273L must be information relating to goods that are not firearms or other goods relating to firearms, and may include:

    - information relating to the import or export of the goods;
    - information relating to licences or permits (however described) for the goods;
    - personal information or other information in relation to one or more persons.

Part 4 – Public safety tests for firearms and weapons

55. The importation of firearms and certain weapons into Australia is primarily governed under Schedules 6 and 13 to the Prohibited Imports Regulations. Part 2 of each respective schedule categorises those firearms and weapons to which the Prohibited Imports Regulations apply. Importation of a firearm or weapon of a kind mentioned in Schedule 6 or 13 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for the category of firearm or weapon in the schedule.

56. The proposed amendments would establish a new public safety test for firearms and weapons. These tests would be applicable by discretion of the Minister administering the Prohibited Imports Regulations to assess the importation of goods to which regulations 4F and 4H apply (firearms and certain weapons) and concern whether the importation of the firearm or weapon poses a risk to the health, safety or security of the public or a segment of the public, which includes emergency services personnel. The Minister administering the Prohibited Imports Regulations would be required to make rules, by legislative instrument, for and in relation to whether the importation of a firearm or a weapon poses a risk to the health, safety or security of the public or a segment of the public. That Minister may also, at any time, require the person importing the good to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the good against the public safety tests.

57. The intent of these amendments is to provide the Minister administering the Prohibited Imports Regulations with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This would ensure that, while certain firearms and weapons may be legal to possess and use domestically, where they may not be suitable for the intended use within the community there is an ability to refuse import permission.

Part 5 – Importation of firearms

58. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 to the Prohibited Imports Regulations classifies all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulations unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

59. The proposed amendments to Schedule 6 requirements would tighten import controls on the following firearms and related articles where elevated risks have been identified:

    - Assisted repeating action and straight pull repeating action firearms
    - Firearms which are operated using belt-fed ammunition
    - Magazines with a capacity of more than 30 rounds
    - Frames and receivers
    - Skirmish markers
    - Sound suppressors and
    - Speed loaders.

60. The proposed amendments to the Prohibited Imports Regulations would introduce definitions for assisted repeating action and straight pull repeating action firearms and would impose import requirements for these firearms in line with existing requirements for the importation of semi-automatic firearms. Import permission requirements would be introduced for firearms that can be operated using belt-fed ammunition in line with existing requirements for the importation of firearms that have a fully automatic firing capability. Importation of magazines with a capacity of more than 30 rounds for any firearm would be restricted and importation could only occur where the importation complies with one of the prescribed tests.

61. Import permission would also be required for speed loaders, devices used to increase the speed at which a firearm can be reloaded, recognising their risk to community safety. New table item 13B of Part 2 of Schedule 6 requires the importation of speed loaders to comply with one of six tests that would ensure import permission can be provided for certain reasons, including government, law enforcement, and sports shooting. Speed loaders would be included in the definition of "category H article" and would be subject to the requirements in section 3E to ensure that returning shooters do not require permission to re-import their speed loaders when returning from competition.

62. New identification and serial number requirements would also be applied to frames and receivers, in line with the existing requirements for complete firearms. Serialisation and identification would also be a requirement for the importation of sound suppressors. To meet the identification requirements for frames, receivers and sound suppressors, these

goods would be subject to visual inspection upon importation – as per current requirements for firearms.

63. The proposed amendments to the Prohibited Imports Regulations would introduce a new definition for ***skirmish markers*** which encompass goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters. These items would be regulated as ***firearms*** and be subject to the same serial number, identification and safety testing requirements, as all other firearms imported into Australia.

64. The official purposes test, when complied with, grants import permission for a range of articles in Schedule 6 of the Prohibited Imports Regulations. Proposed amendments to the specified person test would introduce an additional requirement that the importer has produced evidence that they are an Australian citizen. The purpose of this amendment is to ensure national consistency following commitments by State and Territory Governments to limit firearms licences to Australian citizens. Allowing for the importation of firearms by non-citizens poses a risk to community safety, as those individuals will not be able to be holders of firearms licences. .

65. Finally, Part 5 of Schedule 2 will bring handguns under Commonwealth import permission control. The "dealer test-category H article" test in Part 1 of Schedule 6 of the Prohibited Imports Regulations would be replaced with a new "handgun test". This test remains applicable to all articles in Part 3 that required the dealer test-category H test. The new handgun test would allow the Minister administering the Prohibited Imports Regulations to give permission for the importation of a H category article only if they are satisfied the importer meets certain requirements and that the importation complies with that test. These amendments will centralise the assessment process and provide critical oversight over these firearms.

<u>Part 6 – Approved forms for police certification for firearms imports</u>

66. The amendments contained in Part 6 of Schedule 2 would amend the police certification tests to remove the use of open-ended permits for the importation of firearms and weapons under the Prohibited Imports Regulations. The importation of firearms and weapons could still be obtained through the use of an individual permit for each import.

67. Firearms that can be imported on compliance with the police certification test require the importer to be given a statement, in an approved form, by a relevant police representative to the effect that the importer holds a licence or authorisation according to the law of the relevant state or territory to possess the article (or that a licence or authorisation is not required). This is currently facilitated through approved forms which provide ongoing import permission for firearms for a given period of time. The proposed amendments to the police certification test would invalidate open ended approved forms on or after the commencement of the Bill. Importers relying on these forms would no longer have import permission. New approved forms detailing specific firearms and related goods (parts, ammunition, etc) for import would need to be obtained for the purposes of complying with the police certification test in Schedule 6.

68. The proposed amendments to the Schedule 6 police certification test would be replicated in the police certification test for weapons in Schedule 13 to the Prohibited Imports Regulations. It would render a statement made in approved form for the open-ended

import of some weapons would have no effect in relation to the importation of a good on or after the day the Bill commences.

69. Following commencement, importers would be required to seek import permission for each import. Importers would not be required to individually apply for each item in an import consignment.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

70. Part 7 of Schedule 2 would amend the *Criminal Code Act 1995* (Criminal Code) and *Crimes Act 1914* (Crimes Act) to create new offences for using a carriage service to access, provide access, possess, or control, material that instructs, supports, or facilitates the manufacture or modification of a firearm, firearm accessory, firearm part, firearm magazine, or an explosive or other lethal device.

SCHEDULE 3 – Transitional rules

71. Schedule 3 would allow the Minister administering the *Australian Federal Police Act 1979*, the Minister administering the ART Act, or the Minister administering Part XII of the Customs Act, to make rules prescribing transitional matters relating to the amendments or repeals made by the Bill.

Human rights implications

72. The Bill would engage the following human rights under the International Convention on Civil and Political Rights (ICCPR):

- right to life in Article 6
- right to freedom from arbitrary detention and right to liberty and security of a person in Article 9
- right to a fair and public hearing and right to the presumption of innocence in Article 14
- right to legality in Article 15
- right to protection against arbitrary and unlawful interferences with privacy in Article 17
- right to freedom of opinion and expression in Article 19
- right to protection from exploitation, violence and abuse in Article 20
- right to be equal before the law and without discrimination to the equal protection of the law in Articles 2 and 26, and
- right to enjoy and benefit from culture in Article 27.

73. The Bill would engage the following human rights under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR):

- right to work in Article 6.

74. The Bill would engage the following human rights under the *in International* Convention *on* the Elimination of All Forms of Racial Discrimination (ICERD):

    - condemnation of propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4.

SCHEDULE 1 – CUSTOMS AMENDMENTS

Right to freedom of expression and prohibition on the advocacy of hatred in Articles 19 and 20 of the ICCPR

75. Article 19 of the ICCPR relevantly provides that:

    2)Everyone has the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

    3) The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

        a) for respect of the rights or reputation of others;

        b) for the protection of national security or of public order (ordre public), or of public health or morals.

76. Article 20(2) of the ICCPR requires that:

    Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

77. The proposed amendments to the Prohibited Imports Regulations and the Prohibited Exports Regulations to classify violent extremist material and prohibited symbols as prohibited goods engage rights under Article 19(2) of the ICCPR by limiting an individual's ability to receive and import violent extremist material and prohibited symbols. This restriction on free expression is justified on the basis that violent extremist material and prohibited symbols cause significant harm to many Australians. Nazi symbols are widely recognised as representing and conveying ideologies or hatred, violence and racism which are incompatible with Australia's multicultural and democratic society. Similarly, violent extremists and terrorist organisations use prohibited symbols to signal their ideology to a wide-ranging audience, to recruit and inspire behaviours from like-minded individuals and to establish group belonging. The use of the Islamic State flag in the Bondi Beach terrorist attack in December 2025 demonstrates this.

78. Violent extremist and terrorist acts represent the gravest threats to the welfare of Australians as they include causing serious physical harm or death, damaging property, creating a serious risk to the health or safety of the public and interfering with electronic systems. Advocating terrorism heightens the probability of the commission of terrorism offences on Australian soil and encourages others to commit terrorist acts overseas. It is reasonable that steps should be taken to discourage activities and behaviour that promotes such conduct. This includes prohibiting the import and export of goods that are or contain violent extremist material or prohibited symbols.

79. Goods that are or contain violent extremist material or prohibited symbols may be imported or exported where written permission is granted by the responsible Minister or authorised person, or where the goods are being imported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or (b)(ii), or paragraph 80.2H(10)(a) to (e), of the Criminal Code. These include where the import or export is for religious, academic, educational, artistic, literary or scientific purpose or for the purposes of making a news report, or a current affairs report by a person working in a professional journalistic capacity, or legal proceedings or public duties. In considering whether to grant a permission, the responsible Minister is to have regard to, among other relevant matters, the purposes for which the goods are to be imported or exported, and the extent to which the person conducts activities of an artistic or educational, or of a cultural or scientific, nature to which the goods relate.

80. By reducing access to violent extremist material and prohibited symbols and deterring the advocacy of such acts, the proposed amendments also promote the rights of others (in accordance with Article 19(3)(a)). In this instance, this may include protecting people's right to life under Article 6 of the ICCPR. The prohibition on the import or export of a good that is or contains violent extremist material or a prohibited symbol does not disproportionately limit freedom of expression. Accordingly, the limitation on the freedom of expression is reasonable, necessary and proportionate to achieving a legitimate policy objective and is consistent with the permissible limitations set out under Article 19(3) and supports the obligation under Article 20(2) to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Right to a fair trial and the presumption of innocence in Article 14 of the ICCPR

3. Article 14(2) of the ICCPR states that:

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

81. The proposed amendment to Part 1 of Schedule 7 to the *Customs Regulation 2015* (Customs Regulation) may engage Article 14(2) as it proposes to remove the commercial quantity and commercial use qualifiers for objectionable goods to be considered as a tier 1 good. Under the existing regulations, the importation or exportation of a non-commercial quantity of objectionable goods without permission is treated as a strict liability offence under section 233 of the *Customs Act 1901* (Customs Act). By removing the commercial quantity and commercial use thresholds for objectionable goods to be classified as tier 1 goods, the importation or exportation of objectionable goods in any quantity may also be subject special offences relating to tier 1 goods applicable under section 233BAA of the Customs Act. This could result in the prosecution and potential imprisonment of persons found guilty of unlawfully importing or exporting objectionable goods not currently subject to the higher maximum penalty applicable to tier 1 goods in non-commercial quantities and for non-commercial use. The maximum penalty for offences under section 233BAA is five years imprisonment, or 1000 penalty units, or both.

82. Unlike offences under section 233 which are strict liability, an offence under section 233BAA requires that a person be reckless to the fact that the goods were classified as tier 1 and the import or export of the goods was intentional. A person who

may be charged with an offence against section 233BAA of the Customs Act as a tier 1 offence for unlawful objectionable goods importation or exportation will, as with other offences related to the importation or exportation of prohibited goods, be afforded due process and the opportunity to respond to evidence put forward during prosecution.

83. The intent of removing commercial quantity limits for objectionable goods as tier 1 goods is to provide the court with the discretion to impose higher penalties or a penalty of imprisonment for the most serious offending where the importation or exportation is found to be intentional and the person was reckless to the fact the goods were tier 1 goods, while retaining the lesser strict liability offence available under section 233 in situations where the mental elements cannot be proven. This discretion enhances existing deterrent measures for the unlawful importation or exportation of objectionable goods. Given the serious risk to national security and community safety from the importation of objectionable goods (which can include material advocating a terrorist act, violent extremist material, prohibited symbols, child-like sex dolls, child exploitation material, and extreme animal abuse material) it is appropriate for the most egregious offences to be punishable by imprisonment.

84. Advancements in electronic storage have significantly altered the operating environment for objectionable goods. A single electronic device is now capable of storing thousands of images and videos, whereas prior to the amendment, the Customs Act and the Customs Regulation treated this as one good. Removing the commercial quantity threshold for objectionable goods to attract a tier 1 offence provides the court with discretion to consider the quantity of objectionable images and not just the quantity of devices the images are held on at the time of importation or exportation.

85. The strengthening of penalties is intended to:

- make appropriate sanctions available to a court for identified egregious offences;
- increase the deterrence effect of the border controls; and
- encourage voluntary compliance with border controls.

86. The increased penalty is necessary, reasonable, and proportionate to protect national security and community safety and reflects the seriousness of the offence.

Protection against exploitation, violence and abuse in Article 20 of the ICCPR; Right to equality before the law in Article 26 of the ICCPR; Condemnation of propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the ICERD.

87. The protection against exploitation, violence and abuse in Article 20 of the ICCPR requires that countries outlaw the vilification of persons on national, racial or religious grounds amounting to incitement of discrimination, hostility or violence.

88. Australia has made a reservation in relation to Article 20 to the effect that the Commonwealth and the states had legislated with respect to the subject matter of Article 20, in matters of practical concern in the interest of public order, and that it therefore wished to reserve the right not to introduce further legislation on these matters. The proposed legislation would further support compliance with Article 20 of the ICCPR by

criminalising certain forms of national, racial or religious hatred. The UNHRC has affirmed (and Australia has agreed) that the prohibitions required by Article 20 of the ICCPR are compatible with the right of freedom of expression, enshrined in Article 19 of the ICCPR.

89. The right to equality before the law in Article 26 of the ICCPR provides that the law should prohibit any discrimination, and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

90. The requirement to condemn propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the ICERD requires countries to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination. Article 4(a) provides for the criminalisation of all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any racial or ethnic groups.

91. Australia has made reservation in relation to Article 4(a) on the basis that it was not in a position to specifically treat all the matters covered by the article at the time of ratification. The proposed legislation would promote the intent of the ICERD to eliminate all forms of racial discrimination and incitement to discrimination.

SCHEDULE 2 – FIREARMS AMENDMENTS

Part 1 – National gun buyback

Right to life in Article 6 of the ICCPR

92. Article 6(1) of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

93. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

94. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

95. The establishment of the national gun buyback scheme would promote the right to life by reducing the number of firearms in the community to enhance national security and community safety. The firearms covered in this measure are lethal weapons that pose a clear threat to lives, as tragically demonstrated by the antisemitic terrorist attack at Bondi Beach on 14 December 2025. The national gun buyback scheme will see a reduction of the number of dangerous firearms circulating in the community, thereby strengthening Australia's protection of the right to life.

Part 2 – Firearms background checks

Right to work in Article 6 of the ICESCR

96. Article 6(1) of the ICESCR states:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

97. The right to work does not equate to a guarantee to particular employment. As the Parliamentary Joint Committee on Human Rights notes in its Guide to Human Rights, the right to work:

> *… is not to be understood as providing an unconditional right to obtain employment or for the state to provide everyone with employment; rather it is a right to choose an occupation and engage in work. It applies to all types of work, both in the public and private sectors, and to the formal and informal labour market.*

98. The United Nations Committee on Economic Social and Cultural Rights (CESCR) recognises that the right to work in Article 6 does not equate to a guarantee of full employment. The CESCR recognises the existence of international factors beyond the control of countries, which may hinder the full enjoyment of the right to work in many countries (for example, transnational, serious and organised crime). The CESCR has stated that the right to work affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.

99. Under Article 4 of the ICESCR, the rights in Article 6 can be limited for the purposes of promoting general welfare in a democratic society. Any limitations need to be reasonable, necessary and proportionate to the legitimate objective sought to be achieved.

100. The proposed amendments to establish a new background checking framework that enables AusCheck to facilitate a firearms background check may engage the right to work, as an adverse criminal intelligence assessment furnished by the ACIC or adverse or qualified security assessment furnished by the ASIO to AusCheck for the purposes of a background check, may result in an applicant being denied a firearms licence by a state and territory firearms licensing authority. As a consequence, the applicant may be denied or terminated from certain jobs that require a person to hold a firearms licence, for example, as an armed security guard.

101. However, the right to work in Article 6 of the ICESCR does not guarantee that a person has a right to work in a particular industry. Acts of terrorism and serious and organised crime involving the use of firearms can result in significant loss of life, permanent and significant physical and psychological harm, and broader harms to social cohesion. Any limitation on the right to work that may arise as a result of a person being refused a firearms licence, or having such a licence cancelled or suspended, on the basis of an adverse or qualified security assessment or adverse criminal intelligence assessment is a reasonable, necessary and proportionate measure to prevent the issuing of a firearms licence to a person whose ability to possess a firearm may be prejudicial to security or may advance serious and organised crime.

102. To the extent that the measure may limit the opportunity for an individual to gain employment of their choosing, the measure is proportionate and the least rights restrictive, as it only limits their ability to gain employment in vocations that require a firearms licence. It would not prevent the individual from gaining employment of their choosing in a vocation that does not require a firearms licence. As a mitigation for the limitation, an individual would retain the right to seek merits review of final decisions on firearms licence applications made by a state or Territory firearms licensing authority, subject to the laws of the relevant jurisdiction. The applicant would also have the right to seek judicial review in accordance with subsection 75(v) of the *Constitution* or section 39B of the *Judiciary Act 1903* (Judiciary Act).

103. The proposed amendments to the Crimes Act to permit the use and disclosure of spent, pardoned and quashed conviction information to inform:

- ASIO in the performance of its functions
- the ACIC in the performance of its criminal intelligence assessment function, and
- an intelligence or security agency in making employment-related decisions,

may engage the right to work in certain circumstances. An individual's spent, pardoned or quashed conviction information could be used to inform an adverse or qualified security assessment or an adverse criminal intelligence assessment relating to the holding of an ASIC or a MSIC, allowing a person unescorted access to secure spaces at airports, where, for example, the individual's conviction for a terrorism or serious and organised crime offence was quashed on procedural grounds, without controverting the evidence of their conduct. As a result, an individual may be denied or terminated from certain jobs requiring the individual to hold an ASIC. Such information could also be used to inform a security or intelligence agency's decision as to whether to engage the individual to work for, or perform work for, the agency. Employment in, or engagement in any capacity, by an intelligence or security agency generally requires the highest level of trust and integrity, such that information concerning pardoned, quashed or spent convictions may appropriately be considered by such agencies when determining whether a person should be employed or otherwise engaged by the agency.

104. As noted above, the right to work in Article 6 of the ICESCR does not guarantee that a person has a right to work in a particular industry. Employment in fields for which background checks or intelligence assessments are required, such as for unescorted access to secure areas of airports and seaports, roles requiring an individual to hold a firearm, or roles requiring a security clearance including in intelligence and security agencies, is appropriately subject to more stringent controls than other fields. This reflects the highly sensitive nature of such work. Allowing spent, pardoned and quashed conviction information to be used to inform the performance of ASIO's functions, the performance of the ACIC's criminal intelligence assessment function, and employment-related decisions in intelligence and security agencies is a reasonable, necessary and proportionate measure to mitigate risks to security, and associated with serious and organised crime, arising from employment in such roles.

Right to a fair and public hearing in Article 14 of the ICCPR

105. Article 14(1) of the ICCPR provides:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

106. Article 14 of the ICCPR includes protections relating to justice and ensuring a fair hearing. The right to a fair and public hearing applies to both criminal and civil proceedings, and in cases before both courts and tribunals.

107. These proposed amendments engage the right to a fair and public hearing to the extent they disapply the notice requirements and merits review mechanisms set out in Part IV of the ASIO Act, and Division 3 of the new Part III of the ACC Act in relation to firearms background checks. Under the measures, ASIO may provide an adverse or qualified security assessment, and/or the ACIC may provide an adverse criminal intelligence assessment, to AusCheck in relation to a decision by a firearms licensing authority about whether to issue or revoke a firearms licence.

108. This means that if an adverse or qualified security assessment is made by ASIO against an individual to whom the background check relates, the individual will not receive a notice of this from AusCheck, nor will they have the ability to apply to the ART for review of the assessment under section 54 of the ASIO Act. Similarly, an individual against whom an adverse criminal intelligence assessment has been made by the ACIC will not have notification or merits review rights under the ACC Act. The outcome of a background check will be provided by AusCheck to the relevant firearms licensing authority responsible for firearms licensing to inform its decision, in relation to the individual who either applied for or currently holds a firearms license. The form of advice given to the firearms licensing authority will be provisioned for in the AusCheck Regulations. Any notification to the individual about the licence decision will occur in accordance with the laws of that jurisdiction.

109. Disapplying notification requirements and merits review rights for individuals subject to an adverse or qualified security assessment or criminal intelligence assessment is a reasonable limitation on the right to a fair and public hearing. As outlined in paragraph 1 of the National Firearms Agreement, firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety. The Commonwealth background checking framework is designed to identify and provide advice to firearms licensing authorities on individuals who would pose a risk to security (in particular, in relation to politically motivated violence including terrorism, or the promotion of communal violence) or the advancement of serious and organised crime, should they be granted or retain a firearms licence. The removal of notification requirements and merits review rights is appropriate in a framework where the protection of public safety and national security is of paramount importance, and where an adverse assessment would relate to a privilege, rather than an individual's rights.

110. The amendments do not displace procedural fairness obligations in relation to the person in respect of whom an adverse or qualified security assessment, or an adverse criminal intelligence assessment, has been furnished. These obligations ensure that the person may know the case against them and may be provided with the opportunity to be heard, to the extent possible without prejudicing public safety or national security.

111. There will be additional pathways available to the applicant for review of an adverse or qualified security assessment or criminal intelligence assessment, or the decision to revoke or not issue a firearms licence. A security or criminal intelligence assessment would form an input to the ultimate decision of the relevant firearms licensing authority as to whether to grant or renew a firearms licence. Subject to the laws of the relevant jurisdiction, the individual may retain the right to seek merits review of final decisions on firearms licence applications made by a firearms licensing authority. In jurisdictions that do not provide for external merits review of firearms licensing authorities, it would be incongruous for merits review to be available in relation to a security or criminal intelligence assessment that forms a single input to the ultimate firearms licensing decision. An affected individual will also retain the ability to seek judicial review of the assessment in accordance with subsection 75(v) of the Constitution or section 39B of the Judiciary Act.

112. The consequential amendments in Part 2 of Schedule 2 to the *Administrative Decisions (Judicial Review) Act 1977* and the *Administrative Review Tribunal Act 2024* in this Bill would also engage this right, as they will replace references in these Acts to the ACIC's current criminal intelligence functions under Part II Division 2A of the ACC Act with references to the new criminal intelligence assessment framework in Part III. Criminal intelligence assessments are generally exempt from these Acts or have limitations on disclosure of the information surrounding them during administrative review processes. Strengthening the criminal intelligence assessment framework to include AusCheck background checks for firearms related purposes means these criminal intelligence assessments are unable to be disclosed in these processes. However, these measures are necessary and proportionate in ensuring the legitimate aim that information that is potentially prejudicial to the safety and security of the Commonwealth is not disclosed.

113. Amendments in Part 2 of Schedule 2 to the SD Act and TIA Act will clarify the ability of the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. The purpose of these amendments is to ensure that Commonwealth agencies can meet their disclosure obligations, in line with the proper administration of justice and to promote an individual's right to a fair hearing.

Right to privacy in Article 17 of the ICCPR

114. Article 17(1) of the ICCPR states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

115. Pursuant to Article 17(1) of the ICCPR, an interference with an individual's privacy must have a lawful basis and not be arbitrary. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances.

116. The UNHRC has interpreted the requirement of 'reasonableness' such that any interference with privacy is proportional to the end sought and be necessary in the

circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- serve a legitimate objective,
- adopt a means that is rationally connected to that objective, and
- the means adopted are not more restrictive than they need to be to achieve that objective.

117. In enabling the ACIC and ASIO to conduct criminal intelligence assessments and security assessments, respectively, for the purpose of informing AusCheck firearm background checks, the proposed measures engage the right to privacy under Article 17 of the ICCPR.

118. The ACIC and ASIO may lawfully collect personal information about an individual, with or without the individual's consent, as part of their statutory functions. Consent for the AusCheck firearms background check will be obtained by the firearms licensing authority at the time of the licence application. For ad hoc checks initiated by law enforcement or national security agencies, consent is not required as the check would be authorised by law.

119. The amendments would enable regulations to prescribe the information required for a firearms background check. Any collection and use of personal information would be subject to safeguards under the AusCheck Act and the Privacy Act. The amendments would confirm that only information relating to the individual who is or has been subject to a firearms background check is retained in the AusCheck database.

120. Firearms licence applications are voluntary, and individuals consent to application criteria and processes set out in legislation when lodging an application. The amendments would enable AusCheck to facilitate firearms background checks, which may include security assessments from ASIO and criminal intelligence assessments from the ACIC, and share the outcome of a background check with the relevant firearms licensing authority. To the extent the proposed amendments may limit a person's right to privacy, these measures aim to prevent individuals who pose a serious risk, such as involvement in terrorism or serious and organised crime, from accessing firearms, ensuring that any collection and use of personal information is lawful and proportionate to the objective of protecting public safety and national security.

121. All personal information, of the individual to whom the background check relates, collected through the AusCheck firearm background check process will be 'AusCheck scheme personal information' (as defined in subsection 4(1) of the AusCheck Act) providing a safeguard for information collected for background checking purposes. The use and disclosure of AusCheck scheme personal information is subject to stringent safeguards under sections 13, 14 and 15 of the AusCheck Act. Appropriate safeguards for personal information collected for the purposes of a firearms background check will also be provided through the Privacy Act. All personal information collected and held by the government must adhere to the Australian Privacy Principles (APPs) as set out under the Privacy Act. Failure to comply with privacy obligations can have serious legal, financial and reputational consequence.

122. The amendments would include provisions for consent requirements to be embedded in the AusCheck Regulations. Individuals would consent to a firearms background check when applying for a licence, and the amendments would provide for deemed consent where a person already holds a firearms licence. This measure provides a safeguard on any limitation to the right to privacy by ensuring that there is full and express consent to the handling of personal information as part of the firearms background check. In practice, when an individual provides consent for a firearms background check for themselves, they will be required to consent to the information handling process as outlined within a Privacy Notice. The Privacy Notice will outline the information handling processes for both the firearms background check and disclosure of the information collected for the purposes of the firearms background check.

123. The AusCheck Regulations may provide for the information required in an application, any information not relating to the individual who is or has been subject to a firearms background check would be collected indirectly through the licence application, such information would be excluded from retention by AusCheck under proposed amended sections 13 and 14 of the AusCheck Act. Under these amendments, AusCheck would not incorporate information other than that relating to the individual who is or has been subject to a firearms background check in its own records or databases, and such information would not be able to be assessed or disclosed for any other purpose. All handling is governed by safeguards outlined in the AusCheck Act and the Privacy Act, as highlighted above, including compliance with the APPs. These controls ensure that collection and disclosure of information, other than the information of the individual who is or has been subject to a firearms background check, is lawful and limited to what is necessary and proportionate to the legitimate objective of preventing firearms access by individuals who pose a security or serious criminal risk to national security.

124. In the initial stages of implementation, there may be scenarios where a check is initiated on a current licence holder by either a national security agency, or a law enforcement agency and the individual to whom the background check relates has not previously been subject to an AusCheck background check through the application process. The individual to whom the background check relates is taken to have consented to the background check by holding the licence. For the purposes of information gathering, AusCheck will provide information (if any) that is on hand about an applicant to ASIO and the ACIC, but will not request additional information not held in the AusCheck database. Where required, ASIO and the ACIC will use lawful means to obtain the necessary information about the individual to whom the background check relates.

125. For own-motion checks initiated by a national security agency or law enforcement agency, regardless if an individual has provided consent for a background check previously or not, consent is deemed as a condition of holding the licence. The Privacy Notice provided to licence holders and applicants will cover this deeming provision and be available on accessible platforms as well as given at the time of application or renewal.

126. To the extent that deemed consent for background checks initiated by law enforcement or national security agencies may limit the right to privacy under Article 17 of the ICCPR, this limitation is reasonable, necessary, and proportionate to the legitimate objective of protecting public safety and national security. It applies only in circumstances where an individual already holds a firearms licence—a voluntary status that carries inherent obligations under state and territory legislation—and is subject to statutory safeguards. The measure adopts the least rights-restrictive approach by relying

on existing information held by AusCheck (or a firearms licensing authority where required) and lawful means by ASIO and the ACIC, without requiring additional intrusive data collection. These controls ensure interference with privacy is lawful, targeted and not arbitrary.

127. The consequential amendments to the ABF Act, Crimes Act, SD Act and the TIA Act in Part 2 of Schedule 2 to the Bill would expand the ACIC's ability to consider and use sensitive information and documents, which may include personal information, when making a criminal intelligence assessment. This would include existing information in the ACIC's holdings, information disclosed under the SD Act and TIA Act by Commonwealth, state and territory agencies for the purpose of the ACIC making a criminal intelligence assessment, and telecommunications data disclosed under the TIA Act for the purpose of making a criminal intelligence assessment. Currently, the ACIC is unable to use existing information in its holdings to support a reliable criminal intelligence assessment for the purpose of a firearms background check. This is due to different information sharing rules depending on how the information was obtained. Commonwealth, state and territory agencies are also unable to disclose information to the ACIC if it is for the purpose of making a criminal intelligence assessment. Access to this information is necessary to protect public safety by preventing individuals involved in serious and organised crime from accessing firearms. As far as the consequential amendments may limit the right to privacy, any limitation is therefore lawful and not arbitrary.

128. The consequential amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the purposes of its criminal intelligence assessment function. Telecommunications data may consist of personal information, including subscriber and account records such as the name, address and contact details for a person, as well as records of the time, date, duration of, and parties to communications made using a particular service, and the approximate location of a communications device. Information obtained by the ACIC using these powers may consist of personal information. Limitations on the right to privacy through obtaining information through covert investigative powers would be necessary to enable the ACIC to conduct a criminal intelligence assessment, including to resolve basic intelligence questions such as determining the identity of persons relevant to the assessment, and the nature and extent of associations between persons relevant to the assessment. The ability to covertly obtain such information ensures the ACIC can detect and explore potential serious and organised criminal associations that an applicant may seek to conceal. Enabling the ACIC to detect and explore such associations would be critical for making an informed criminal intelligence assessment, directed at preventing the advancement of serious and organised crime in sensitive contexts, including firearms licensing, and unsupervised access to secure areas of airports, seaports and offshore oil and gas facilities.

129. The power to authorise the disclosure of telecommunications data would continue to be restricted to authorised officers of the ACIC, being officers holding a management office or position in the ACIC that have been authorised in writing by the CEO of the ACIC for this purpose. Section 180F of the TIA Act would continue to require authorised officers to be satisfied on reasonable grounds that any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable and proportionate, having regard to the gravity of any conduct to which the authorisation is sought, the likely

relevance and usefulness of the information or documents, and the reason why the disclosure is proposed to be authorised. The ACIC's access to telecommunications data for the purposes of a criminal intelligence assessment would be subject to independent oversight by the Commonwealth Ombudsman or, following the commencement of Schedule 1 to the *Strengthening the Oversight of the National Intelligence Community Act 2025*, the Inspector-General of Intelligence and Security. The Ombudsman and Inspector-General would each be entitled to full and free access to the records of the ACIC when inspecting the ACIC's use of these powers, and each possess coercive information gathering powers when investigating the ACIC's use of these powers. The ACIC's access to telecommunications data for the purposes of conducting criminal intelligence assessments would be lawful and not arbitrary.

The right to life in Article 6 of the ICCPR

130. Article 6(1) of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

131. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

132. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

133. The amendments establishing a firearms background checks regime promote the right to life by ensuring that AusCheck and other entities will be able to provide relevant advice to firearms licensing authorities to ensure that people who may be prejudicial to security or may advance serious and organised crime are not able to access firearms. The scheme is designed to prevent the proliferation of potentially lethal weapons to unauthorised individuals by enabling AusCheck to coordinate security and criminal intelligence assessments and provide advice to firearms licensing authorities.

134. Enabling the use of Commonwealth intelligence in licensing decisions, reduces the likelihood that firearms will be used in connection with terrorism, serious and organised crime, or other activities prejudicial to security. By targeting high-risk individuals through a proportionate and least rights-restrictive approach, the measure supports obligations under Article 6 of the ICCPR to protect life from reasonably foreseeable threats.

<u>Part 3 – Transmission of firearms information and other information to ACIC</u>

Right to privacy in Article 17 of the ICCPR

135. Article 17 of the ICCPR states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

136. Pursuant to Article 17(1) of the ICCPR, an interference with an individual's privacy must have a lawful basis and not be arbitrary.

137. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UNHRC has interpreted the requirement of 'reasonableness' such that any interference with privacy is proportional to the end sought and be necessary in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- Serve a legitimate objective; and
- Adopt a means that is rationally connected to that objective; and
- The means adopted are not more restrictive than they need to be to achieve that objective.

138. The proposed amendments to the Customs Act to allow for the transmission and disclosure of firearms information and other prescribed information to the ACIC may engage the right to privacy.

139. Firearms information is defined and includes information relating to firearms, or to other goods relevant to firearms including firearms frames, firearms receivers and firearms sound suppressors. That information may include information relating to the import or export of the firearms or other goods, information relating to licences or permits, and personal information in relation to one or more persons. Other information may be prescribed and could include items such as seizure information of other restricted goods at the border under the Customs Act or details of illicit activity identified by Department of Home Affairs and ABF officers in the course of their duties.

140. The Department of Home Affairs currently collects information on the import and export of goods under the Customs Act, including personal information. Certain information, being firearms information and other prescribed information, is required to be disclosed to other Commonwealth and state and territory agencies. This will occur through the National Firearms Register.

141. The amendments do not expand the types of personal information that can be collected or the circumstances in which it may be collected. Personal information held by the Department of Home Affairs may be Immigration and Border Protection (IBP) information, which is subject to strict information sharing limitations under the ABF Act. This information can also include personal information governed by the Privacy Act. All personal information collected and held by the government must adhere to the APPs as set out under the Privacy Act. Failure to comply with privacy obligations can have serious legal, financial and reputational consequence.

142. These controls ensure that collection, transmission and disclosure of personal information is lawful and limited to what is necessary and proportionate to the legitimate objective of regulating firearms and goods relating to firearms within the

Australian community, supporting community safety and improving law enforcement capability.

143. To the extent that the proposed amendments to transmit firearms information and other prescribed information may limit the right to interfere with an individual's privacy under Article 17(1) of the ICCPR, they are reasonable, necessary and proportionate to achieving the legitimate policy objective of protecting the Australian community.

Part 4 – Public safety tests for firearms and weapons

Right to life in Article 6 of the ICCPR

144. Article 6(1) of the ICCPR states that:

> *Every human being has the inherent right to life. The rights shall be protected by law. No one shall be arbitrarily deprived of his life.*

145. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

146. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

147. The proposed introduction of the discretionary public safety test to the Prohibited Imports Regulations also promotes the right to life under Article 6(1) of the ICCPR.

148. The public safety test for firearms grants the Minister administering the Prohibited Imports Regulations (or the Minister's delegate) power to refuse import permission where the importation of the firearm poses a risk to the health, safety or security of the public or a segment of the public (including emergency services personnel). It is intended to capture scenarios where there are not explicit grounds upon which to refuse import permit applications where the granting of those applications may compromise public safety despite the import otherwise meeting the requirements under the import test in the application (e.g. business activities) and meeting all current legislative requirements. The right to life under Article 6(1) of the ICCPR would be promoted where firearms are prevented from being imported due to concerns around public safety.

149. The public safety test for example, would allow for import permission to be refused where there is evidence of particular firearms that have failed catastrophically due to manufacturing issues or design defects, resulting in injuries and even explosions of the barrel or frame. Additionally, emerging firearms technology is driven by demands for increased lethality, precision, safety, and adaptability, with the most significant innovations appearing in military applications and gradually influencing civilian technology. Military and commercial drones have been, and are being, equipped with firearms, a development that is a significant part of modern warfare and security technology, however is not explicitly addressed by the Prohibited Import Regulations. The endangerment to the lives of individuals is a reasonably foreseeable threat posed by

the presence of firearms such as these in the community, and such situations are where this power would be enlivened.

150. Similarly, proposed amendments introducing a discretionary public safety test for weapons under the Prohibited Imports Regulations also promote the right to life under Article 6(1) of the ICCPR. The public safety test for weapons will apply, for example, to the importation of fully autonomous weapons and firearms that are capable of posing significant harm to the community. The endangerment to the lives of individuals is a reasonably foreseeable threat posed by the presence of certain weapons in the community, and such situations are where this power would be enlivened.

151. Preventing the importation of firearms, and weapons where it is determined public safety may be endangered would protect individuals from both accidental harm and intentional misuse of these goods. Due to the high-risk character of firearms and certain weapons this can involve risk of serious injury or death. Giving the Minister administering the Prohibited Imports Regulations the power to refuse import permission is reasonable and proportionate in relation to the dangers posed by unsafe firearms and certain weapons in the community, and the potential significant detrimental impact on human lives. These powers promote the right to life by reducing the likelihood that situations where accidental or intentional misuse of firearms and certain weapons endangering human lives can occur.

Part 5 – Importation of firearms

Right to equality in Article 2 and Article 26 of the ICCPR

152. Article 2(1) of the ICCPR states:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

153. Article 2(1) of ICCPR requires that Australia ensure the rights recognised in the ICCPR extend to all individuals (citizens, residents and non-citizens) within its territory and subject to its jurisdiction.

154. Article 26 of the ICCPR provides that:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

155. Article 26 requires that all persons are to be treated equally before the law and no law shall discriminate any of the grounds listed in the Article. The UNHRC in its *General Comment 18* explains that the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference on grounds such as nationality or other status.

156. Article 2(2) of the ICESCR provides that:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

157. However, in its General Comment 18, the UNHRC stated that:

> *The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

158. Similarly, in its General Comment on Article 2 of the ICESCR, CESCR has stated that:

> *Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects*.

159. The proposed amendments to the specified persons test (Item 3.2 of Part 1 of Schedule 6) and the police certification test (Item 4.1, 4.2, 4.4 and 4.5 of Part 5 of Schedule 6) of the Prohibited Imports Regulations engages the right to equality and non-discrimination due to differential treatment based on citizenship.

160. To the extent that proof of Australian citizenship is required to meet the specified person test for firearms and related goods may limit the right to equality and discrimination on the basis of citizenship status is reasonable and proportionate to meeting the legitimate objective of protection the Australian community.

161. Consistent with the National Firearms Agreement, the possession and use of a firearm is a privilege that is conditional on the overriding need to ensure public safety. Applying the Australian citizenship requirement provides an additional layer of community protection to complement the fit and proper purposes test for firearms licences conducted by firearms licensing authorities. This measure aims to reduce the risk of further gun violence in Australia and ensure the importation of firearms is reasonable, controlled and for approved purposes.

Right to Life in Article 6 of the ICCPR

162. Article 6(1) of the ICCPR states that:

> *Every human being has the inherent right to life. The rights shall be protected by law. No one shall be arbitrarily deprived of his life.*

163. The UNHRC in its General Comment 36 states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

164. General Comment 36 also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal firearms to unauthorised individuals.

165. Proposed amendments to subregulations 2(1) and 4F(4) and Schedule 6 to the Prohibited Imports Regulations increase import controls on assisted repeating action and straight pull repeating action firearms, and on speed loaders, and promote the right to life under Article 6(1) of the ICCPR, as they lower the risk and potential harm to life posed by such devices by limiting their availability to the Australian community. Assisted repeating action and straight pull repeating action firearms pose a significant risk to the community as they can operate at a higher rate of fire than traditional repeating action firearms however, they are not subject to a higher control. These changes bring import controls for assisted repeating action and straight pull repeating action firearms in line with semi-automatic firearms. Similarly, speed loaders, which are devices that hold multiple rounds of ammunition in alignment for the purpose of quickly reloading a firearm, cylinder, or a firearm magazine, pose a significant risk to the community as they are designed to reload a firearm or firearm magazine with ease and speed but are not subject to appropriate controls. These changes introduce import restrictions commensurate with the risks they pose to the community, while allowing for their continued use for legitimate purposes such as government and defence, law enforcement, and sports shooting.

166. Proposed amendments to Schedule 6 seek to elevate import controls on firearms that utilise belt feeding mechanisms to the highest level of controls and require Commonwealth import permission. Import controls on detachable firearm magazines that have a capacity of more than 30 rounds are also proposed to be increased. These amendments similarly promote to the right to life under Article 6(1) of the ICCPR as high-capacity magazines and firearms that can operate via belt feeding can hold very large quantities of ammunition and exacerbate the risk to the community when accidents or intentional misuse occur. There are no genuine reasons as to why belt fed firearms should be accessible outside of official or specified purposes. Magazines with a capacity greater than 30 rounds are only necessary for limited purposes such as law enforcement, and should not be readily accessible where they do not meet the official purposes test, the specified purposes test, the specified person test or the returned goods test. Similarly speed loaders are likely to have law enforcement, defence and other occupational applications. Restricting these items to certain permissible uses will limit the availability of these items which may improve the ease with which a firearm or magazine can be reloaded and prevent additional harms.

167. Proposed amendments to Schedule 6 imposing additional identification requirements (e.g. unique serial numbers) for a variety of firearms related goods such as frames and receivers and firearm sound suppressors also promote the right to life under Article 6(1) of the ICCPR. These measures reduce risk to the community by increasing ownership accountability and enabling the tracking of these items in the community. The requirement for a unique serial number for firearms related goods increases the ability for law enforcement to identify, trace and assign ownership of these goods and enable their tracking in the NFR upon identification and verification at import.

168. Proposed amendments to Schedule 6 imposing controls on gel ball blasters as firearms also promote the right to life under Article 6(1) of the ICCPR. These amendments

recognise gel ball blasters as firearms and subject them to the same serial number requirements and safety testing as other firearms to reduce the risk to the community and enabling the tracking of these goods. The amendments also seek to impose appearance-based controls on these goods in line with other firearms used for similar purposes (i.e. paintball markers). Controls on gel ball blasters further promote the right to life as these goods are increasingly being manufactured to resemble conventional, military and fully automatic firearms which can be used for intimidation in criminal activities as well as having the ability to converted into fully functional firearms capable of firing ammunition other than gel ball blasters and are being exploited by criminal actors. Police have shot several people brandishing gel ball blasters in incidents across Australia, primarily because the toy guns look identical to real firearms, making it nearly impossible for officers to distinguish them in high-stress situations. Law enforcement personnel always treat a perceived firearm threat as real until it can be proven otherwise, leading to serious, and sometimes fatal, consequences.

169. Similarly, the right to life under Article 6(1) of the ICCPR is also promoted by proposed amendments replacing the "Dealer test-category H article" with a new "Handgun test" to increase import controls on handguns by requiring Commonwealth import permissions. Under the current legislative framework, import permissions for handguns are managed at the state and territory level. Inconsistencies that arise from having the importation of handguns managed at a state and territory level and through police certification can be removed by introducing consistent national requirements. Handguns are primarily used by law enforcement officials, security personnel, and sports shooters, however due to their concealable and portable nature handguns are a desirable commodity amongst criminal groups. These amendments promote the right to life by tightening import controls and reducing access to these firearms which minimises the potential harm caused by the misuse of handguns.

170. The various proposed amendments increasing import controls, identification requirements and Commonwealth import permission requirements give effect to Australia's duty to enact appropriate and adequate legislative measures to protect the right to life under Article 6, primarily though reducing the proliferation of lethal firearms to unauthorised individuals and bad faith actors and, where appropriate, limiting the potential harm to the community by targeting and regulating the highest risk firearms and parts.

Part 6 – Approved forms for police certification for firearms imports

171. Part 6 of Schedule 2 does not engage any of the applicable rights or freedoms.

Part 7 – New offences relating to firearms and explosives manufacture material

Right to freedom from arbitrary detention in Article 9 of the ICCPR

172. The right to liberty in Article 9 of the ICCPR requires that persons not be subject to arrest and detention except as provided for by law and provides that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where a person is deprived of their liberty.

173. Articles 6 of the ICCPR would be engaged by the amendments in this Bill that would introduce new offences criminalising the use of a carriage service for firearms and

explosives manufacture material. The new offences may engage a defendant's right to liberty as it would impose a penalty of imprisonment. However, the new offences do not represent an infringement on the right to liberty and freedom from arbitrary arrest and detention.

174. Limitations on the right to liberty are permissible if they are in accordance with procedure established by law, and if the limitation is reasonable, necessary and proportionate. While it may have the effect putting an offender in custody, the grounds for this are prescribed by law, and only take effect following valid and lawful arrest and/or conviction for the criminal offence.

Right to the presumption of innocence in Article 14 of the ICCPR

175. The right to the presumption of innocence in Article 14 of the ICCPR provides that, in the determination of any criminal charge against a person, that person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) of the ICCPR provides that those charged with criminal offences have the right to be presumed innocent until proven guilty according to law. This is a fundamental principle of common law. The presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond a reasonable doubt.

176. Article 14 of the ICCPR would be engaged by the amendments in this Bill that would introduce new offences relating to firearms and explosives manufacture material. The new offence for possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service would engage Article 14(2) as it would provide that if the prosecution proves three of the four elements of the offence beyond reasonable doubt, it is presumed that the final element of the offence is made out unless the defendant proves otherwise. Specifically, subsection 474.45H(5) would provide that it is presumed, unless the defendant proves to the contrary, that the defendant obtained or accessed the material and used a carriage service to do so.

177. This presumption only applies where the prosecution has proven beyond a reasonable doubt that the person has possession or control of the material, the material is in the form of data held in a computer or contained in a data storage device, and the material is firearms and explosives manufacture material. Consistent with the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide), the burden of proof on the defendant in these circumstances would be an evidential burden, requiring the defendant to adduce or point to evidence that suggests a reasonable possibility that they did not obtain or access the material using a carriage service.

178. The purpose of this presumption would be to address problems encountered by law enforcement agencies in proving beyond reasonable doubt that a carriage service was used to engage in the relevant criminal conduct. This evidence may be very technical. It can also be circumstantial, including for example that the defendant's computer had material saved on the hard drive, the computer was connected to the internet, and records show the computer accessed websites that suggest an association with the material saved on the hard drive. Accordingly, to the extent that this measure limits the right to the presumption of innocence, this is a permissible limitation.

179. Further, the offence in new subsection 474.45H(5) would rely on the Commonwealth's telecommunications power under subsection51(v) of the Australian Constitution. Therefore, the requirement in the offence that the relevant criminal conduct be engaged in using a carriage service would be a jurisdictional requirement. A jurisdictional element of the offence is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not.

180. There would be a number of circumstances in which the offences in new sections 474.45G and 474.45H would not apply as the use of the firearms and explosives manufacture material would be legitimate and not contrary to the public interest. The amendments in the Bill would provide these exceptions in the form of defences under new section 474.45J, and the defendant would bear the evidential or legal burden in relation to these defences. In accordance with the Guide, this is reasonable and appropriate as the information required to prove the existence of one of the prescribed defences would be peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. To the extent that placing the onus on the defendant to prove the matters listed in the defence provisions limits the presumption of innocence, it is reasonable and appropriate.

SCHEDULE 3 – TRANSITIONAL RULES

181. The transitional rules under Schedule 3 ensure that the transition from the previous law to current law do not interrupt any continuing operations. They grant the Minister administering the *Australian Federal Police Act 1979*, the Minister administering the ART Act, or the Minister administering Part XII of the Customs Act, powers to, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to any amendments or repeals that may come after the Bill.

182. These transitional rules provide that the relevant Minister may not create an offence or civil penalty, or provide powers of arrest or detention, or entry, search, or seizure. By limiting any rule-making power to procedural matters, and removing the possibility of creating new offences, penalties, or coercive powers, the transitional rules is consistent with human rights obligations, and positively engages certain rights in the ICCPR, including:

- right to life and security of the person in Articles 6 and 9,
- right to freedom from arbitrary detention in Article 9
- right to a fair trial and right to the presumption of innocence in Article 14
- right to be equal before the law and without discrimination to the equal protection of the law in Articles 2 and 26.

183. For example, the transitional rules positively engage the right to freedom from arbitrary detention. These provide that the relevant Minister may not create an offence or civil penalty, or provide powers of arrest or detention, or entry, search or seizure, and therefore, does not constitute an infringement of the right in Article 9 of the ICCPR.

184. The transitional rules also positively engage the right to a fair trial, by ensuring that if any potential proceedings that are continuing during the transition of legislation will not be prejudiced by the introduction of the Bill.

185. The transitional rules provide that subsection 12(2) of the Legislation Act 2003 does not apply in relation to rules made before the end of the period of 12 months starting on the day this item commences. This means that any rules made within this period that could impose liabilities on a person in respect of anything done or omitted to be done before the instrument is registered or otherwise would affect their rights so as to disadvantage them, if it commences before the instrument's registration, would be valid. Because of this, the transitional rules may compromise the right to legality in Article 15.

186. This potential compromise is necessary and appropriate as the relevant instruments are purely administrative in nature, and the requirement for their application retrospectively may be necessary to support any administrative transitions. It is also controlled by the 12-month time restriction, and the restrictions placed on what rules can be made so that any instruments could not impose liabilities or compromise the rights of any persons.

CONCLUSION

187. The Bill promotes a number of human rights. To the extent that the Bill limits other rights, those limitations are reasonable, necessary and proportionate in achieving a legitimate aim.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

1. This clause provides for the short title of the Act to be the *Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026*.

Clause 2 – Commencement

2. This clause provides for the commencement of each provision in the Bill, as set out in the table. Item 1 in the table provides that sections 1 and 3, which concern the formal aspects of the Bill, as well as anything in the Bill not elsewhere covered by the table, will commence on the day on which the Amendment Act receives Royal Assent.

3. Item 2 in the tables provides that Schedule 1 to the Bill would commence on the day after the Act receives Royal Assent.

4. Item 3 in the table provides that Parts 1 to 6 of Schedule 2 to the Bill would commence on the day after the Act receives Royal Assent.

5. Item 4 in the table provides that Part 7 of Schedule 2 to the Bill would commence on the 28th day after the Act receives the Royal Assent.

6. Item 5 of the table provides that Schedule 3 to the Bill would commence on the day after the Act receives Royal Assent.

Clause 3 – Schedules

7. This clause provides that legislation specified in a Schedule to the Bill would be amended as set out in the applicable items in the relevant Schedule. Any other item in a Schedule to the Bill would have effect according to its terms.

SCHEDULE 1 – CUSTOMS AMENDMENTS

Part 1—Prohibited material

8. Schedule 1 to the Bill, when enacted, amends the *Customs (Prohibited Exports) Regulations 1958* (Prohibited Exports Regulations), *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations), and *Customs Regulation 2015* (Customs Regulation), to prohibit, as objectionable goods, the exportation from and importation into Australia of prohibited symbols and violent extremist material.

9. Schedule 1 to the Bill, when enacted, also amends the *Customs Act 1901* (Customs Act) to provide clarity of operation, and to complement the amendments to those Regulations made by Schedule 2 to the Bill.

Division 1—Amendments

Customs (Prohibited Exports) Regulations 1958

Item 1 After subregulation 3(2AA)

10. This item inserts a new subregulation 3(2AB) after subregulation 3(2AA) of the Prohibited Exports Regulations.

11. Regulation 3 of the Prohibited Exports Regulations deals with the export control of objectionable goods. Under these controls, the export of "objectionable goods" is prohibited unless permission to export those goods is given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* or an authorised person appointed by the Minister.

12. New subregulation 3(2AB), without limiting subregulation (2), also applies to goods that are violent extremist material, or are, depict or contain prohibited symbols.

13. Prior to the amendment made by this item, the export controls available to prohibit the export of violent extremist material and prohibited symbols, and goods within which these materials or symbols are, or are depicted or contained, are limited in their scope.

14. The amendment made by this item ensures the term "objectionable goods" captures violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols (e.g. a computer, flag, mobile phone or other electronic devices that hold these things). As a result of the amendment, officers will have the authority to seize these objectionable goods and take appropriate enforcement action. This strengthens the ability of the Australian Border Force (ABF) to prevent extremist material leaving Australia and reinforces Australia's commitment to combatting violent extremism and hate-based ideologies.

15. The violent extremist material and prohibited symbols that are subject to export control are physical things identified by those terms as defined under the Criminal Code.

Item 2 At the end of subregulation 3(4)

16. This item inserts a new paragraph (c) at the end of subregulation 3(4) of the Prohibited Exports Regulations to provide an exception to the prohibition of objectionable goods in

regulation 3, specifically to those goods that are covered by new subregulation 3(2AB)as inserted by item 1.

17. New paragraph (c) has the effect that the prohibition of goods that are covered by new paragraph 3(2AB)(a), (b) or (c) is not enlivened if the goods are being exported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or(b)(ii), or paragraph 80.2H(10)(a), (b), (c), (d) or (e), of the Criminal Code.

18. The types of conduct that may be relevant to the general public covered by these subparagraphs include conduct for a religious, academic, educational, artistic, literary or scientific purpose, or for the purposes of making a news report or a current affairs report. From a law enforcement perspective, relevant conduct includes where it is necessary for enforcing the law, or for monitoring compliance with, or investigating a contravention of, a law, or conduct for the purposes of proceedings in a court or tribunal. Other types of conduct covered includes conduct in connection with the performance by a public official of the official's duties or functions, for conduct in connection with an individual assisting a public official in the performance of those duties or functions.

19. It is appropriate that these types of conduct do not enliven the prohibition of goods in subregulation 3(2AB), as they indicate circumstances where there may be a genuine need for an exception to the prohibition of those kind of objectionable goods to apply.

Customs (Prohibited Imports) Regulations 1956

Item 3 After subregulation 4A(1AA)

20. This item inserts a new subregulation 4A(1AB) after subregulation 4A(1AA) of the Prohibited Imports Regulations.

21. Regulation 4A of the Prohibited Imports Regulations deals with the import control of objectionable goods. Under these controls, the import of "objectionable goods" is prohibited unless permission to import those goods is given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* or an authorised person appointed by the Minister.

22. New subregulation 4A(1AB), without limiting subregulation (1A), also applies to goods that are violent extremist material, or are, depict, or contain prohibited symbols.

23. Prior to the amendment made by this item, as with export controls, the import controls available to prohibit the import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope.

24. The amendment made by this item ensures the term "objectionable goods" captures violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols (e.g. a computer, flag, mobile phone or other electronic devices that hold these things). As a result of the amendment, ABF officers will have the authority to seize these objectionable goods and take appropriate enforcement action. This strengthens the ability of the ABF to prevent extremist material entering Australia and reinforces Australia's commitment to combatting violent extremism and hate-based ideologies.

25. The violent extremist material and prohibited symbols that are subject to import control are physical things identified by those terms as defined under the Criminal Code.

Item 4 At the end of subregulation 4A(2)

26. This item inserts a new paragraph (c) at the end of subregulation 4A(2) of the Prohibited Imports Regulations to provide an exception to the prohibition of goods in regulation 4A, specifically to those goods that are covered by new subregulation 4A(1AB) as inserted by item 3.

27. New paragraph (c) has the effect that the prohibition of goods that are covered by new paragraph 4A(1AB)(a), (b) or (c) is not enlivened if the goods are being imported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or (b)(ii), or paragraph 80.2H(10)(a), (b), (c), (d) or (e), of the Criminal Code.

28. The types of conduct that may be relevant to the general public covered by these subparagraphs include conduct for a religious, academic, educational, artistic, literary or scientific purpose, or for the purposes of making a news report or a current affairs report. From a law enforcement perspective, relevant conduct includes where it is necessary for enforcing the law, or for monitoring compliance with, or investigating a contravention of, a law, or conduct for the purposes of proceedings in a court or tribunal. Other types of conduct covered includes conduct in connection with the performance by a public official of the official's duties or functions, for conduct in connection with an individual assisting a public official in the performance of those duties or functions.

29. It is appropriate that these types of conduct do not enliven the prohibition of goods in subregulation 4A(1AB), as they indicate circumstances where there may be a genuine need for an exception to the prohibition of those kind of objectionable goods to apply.

Customs Regulation 2015

Item 5 Section 4 (definition of *commercial quantity of objectionable goods*)

30. This item repeals the definition of "commercial quantity of objectionable goods", which is made redundant by the amendment made by item 6.

Item 6 Subclause 1(1) of Schedule 7 (table items 22 and 23)

31. This item repeals table items 22 and 23 of Schedule 7 to the *Customs Regulation 2015* (Customs Regulation), which deal with tier 1 goods, and substitutes a new table item 22.

32. Section 233BAA of the Customs Act establishes offences for the importation and exportation of goods that are "tier 1 goods" punishable by a court by a maximum penalty of 5 years or 1000 penalty units, or both. For section 233BAA, "tier 1 goods" are prescribed in the regulations and, amongst other goods, include objectionable goods.

33. New table item 22 has the effect that a good that is an "objectionable good" (paragraph (a) of new table item 22 refers), but is not an item of child abuse material (paragraph (b) of new table item 22 refers) is prescribed as a "tier 1 good", the importation and exportation of which (without permission) is an offence under section 233BAA of the Customs Act.

34. The amendment made by this item removes the commercial quantities threshold for "objectionable goods" for the purposes of being prescribed as a tier 1 good and, as such, operates to capture all quantities of goods that are objectionable goods described, including, to the extent not covered by an exception, goods that are violent extremist material or prohibited symbols, and goods that contain violent extremist material or prohibited symbols, irrespective of their quantity.

35. Advancements in electronic storage have significantly altered the operating environment for objectionable goods. A single electronic device is now capable of storing thousands of images and videos, whereas prior to the amendment, the Customs Act and the Customs Regulation treated this as one good. For example, removing the commercial quantity threshold for objectionable goods to attract a tier 1 offence provides a Court with discretion to consider the quantity of objectionable images and not just the quantity of devices the images are held on at the time of importation or exportation.

36. The removal of the quantity threshold for objectionable goods is intended to:

- make appropriate sanctions available to a court for identified egregious offences;
- increase the deterrence effect of the border controls; and
- encourage voluntary compliance with border controls.

37. The strengthening of deterrence by including these types of objectional goods within the table of Schedule 7, including all quantities of these goods as described, is considered appropriate due to the serious nature of the materials being captured. The inclusion of these items within an existing framework ensures that the penalties being applied are broadly equivalent to similar offences for the importation or exportation of objectionable goods. Finally, the approach taken is consistent with the Guide.

Item 7 Subclause 1(2) of Schedule 7 (definition of *commercial quantity of objectionable goods*)

38. This item repeals the definition of "commercial quantity of objectionable goods", which is made redundant by the amendment made by item 6.

Division 2—Application and transitional provisions

Customs (Prohibited Exports) Regulations 1958

Item 8 In the appropriate position in Part 5

39. This item inserts a new regulation 27 titled "Transitional matters—amendments made by Part 1 of Schedule 1 to the *Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026*" in Part 5 of the Prohibited Exports Regulations to deal with transitional matters for amendments made to the Prohibited Exports Regulations by the amendments made by Part 1 of Schedule 1 to the Bill, when enacted.

40. New regulation 27 provides that amendments to the Prohibited Exports Regulations made by Part 1 of Schedule 1 to the Bill apply in relation to goods exported from Australia on or after the commencement of that Part.

Customs (Prohibited Imports) Regulations 1956

Item 9 In the appropriate position before Schedule 1

41. This item inserts a new regulation 23 titled "Transitional matters—amendments made by Part 1 of Schedule 1 to the *Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026*" in Part 1 of the Prohibited Imports Regulations to deal with transitional matters for amendments made to the Prohibited Imports Regulations by the amendments made by Part 1 of Schedule 1 to the Bill, when enacted.

42. New subregulation 23(1) has the effect that amendments of the Prohibited Imports Regulations made by Part 1 of Schedule 1 to the Bill apply in relation to goods imported to Australia on or after the commencement of that Part.

Customs Regulation 2015

Item 10 In the appropriate position in Part 18

43. This item inserts a new section 167 titled "Amendments made by Part 1 of Schedule 1 to the *Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026*" in Part 18 of the Customs Regulation to deal with transitional matters for amendments made to the Customs Regulation by the amendments made by Part 1 of Schedule 1 to the Bill, when enacted.

44. New section 167 provides that amendments of the Customs Regulations made by Part 1 of Schedule 1 to the Bill apply in relation to goods imported to Australia on or after the commencement of that Part or goods exported from Australia on or after the commencement of that Part.

Part 2—Powers relating to instruments

Overview

45. Part 2 of Schedule 1 to the Bill, when enacted, seeks to clarify existing provisions within the Customs Act to make clearer the nature of instruments approving forms and statements and the Minister's ability to make legislative instruments, administrative instruments, forms, and statements.

Customs Act 1901

Item 11 At the end of section 4A

46. This item amends section 4A of the Customs Act to insert new subsection 4A(2), to make clear that a form or statement mentioned in section 4A, or an instrument approving such a form or statement, is not a legislative instrument.

47. Section 4A of the Customs Act allows the Comptroller-General of Customs to, by instrument, approve a form or a statement for the purposes of provisions in the Customs Act for which those terms are referenced. This extends through the definition of "This Act" as defined under section 4 of the Customs Act to include for the purposes of provisions in subordinate legislation made under the Customs Act for which those terms are referenced.

48. The approved forms and statements set out the information that needs to be communicated to the Department for the purpose of the provision for which the form or statement is referred to. Information provided through a form is for satisfying documentary requirements. Information provided through a statement is for the provision of information electronically to a system established and maintained by the Comptroller-General of Customs. Instruments approving both provide for the manner and method of the doing of an act, being the provision of information either, via a physical form, or via electronic communication.

49. Table item 6 under section 6 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOM Regulation) has the effect that instruments approving forms are not legislative instruments within the meaning of the *Legislation Act 2003* (Legislation Act). Furthermore, table item 5 of section 6 of the LEOM Regulation has the effect that instruments the effect of which is to approve a manner or method of doing an act are also not legislative instruments. Neither instruments approving a form nor instruments approving a statement are legislative instruments.

50. The purpose of the amendment made by this item is to make clear on the face of the Customs Act that instruments made under section 4A are not legislative instruments within the meaning of subsection 8(1) of the Legislation Act.

51. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers. This amendment complements other amendments in Part 6 of Schedule 2, which deals with approved forms for the purposes of the police certification test on firearms imports.

Item 12 After subsection 50(3A)

52. This item inserts new subsection 50(3B) after subsection 50(3A) of the Customs Act.

53. Section 50 of the Customs Act permits regulations made by the Governor-General, under section 270 of the Customs Act, to prohibit the importation of goods into Australia, and includes:

- by prohibiting the importation of goods absolutely (paragraph 50(2)(a) of the Customs Act refers);
- by prohibiting the importation of goods in specified circumstances (paragraph 50(2)(aa) of the Customs Act refers);
- by prohibiting the importation of goods from a specified place (paragraph 50(2)(c) of the Customs Act refers);
- by prohibiting the importation of goods unless specified conditions or restrictions are complied with (paragraph 50(2)(c) of the Customs Act refers).

54. The regulations under the Prohibited Imports Regulations are made in accordance with section 50 of the Customs Act.

55. Regulations made for the prohibition of goods may set out the specified circumstances, conditions (including preconditions), and restrictions under which the goods are to be prohibited, including the formulation of those circumstances or preconditions.

56. New subsection 50(3B) provides that regulations made for the purposes of section 50 may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

57. The amendment made by this item makes clearer the operation and scope of section 50 to effect specified circumstances, conditions (including preconditions) and restrictions for the purposes of prohibiting the importation of goods by explicitly making clear the Minister has the power to outline these matters by legislative instrument, where that power is conferred by the regulations. This puts beyond doubt the operation of section 50.

58. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify or assist the reader regarding the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers. These amendments also support the amendments in Part 4 of Schedule 2, which enable the Minister to make rules in relation to the public safety test for firearms and weapons imports.

Item 13 After subsection 112(2AA)

59. This item inserts new subsection 112(2AB) after subsection 112(2AA) of the Customs Act.

60. Section 112 of the Customs Act permits regulations made by the Governor-General, under section 270 of the Customs Act, to prohibit the exportation of goods from Australia, and includes:

- by prohibiting the exportation of goods absolutely (paragraph 112(2)(a) of the Customs Act refers);
- by prohibiting the exportation of goods in specified circumstances (paragraph 112(2)(aa) of the Customs Act refers);
- by prohibiting the exportation of goods from a specified place (paragraph 112(2)(c) of the Customs Act refers);
- by prohibiting the exportation of goods unless specified conditions or restrictions are complied with (paragraph 112(2)(c) of the Customs Act refers).

61. The regulations under the Prohibited Exports Regulations are made in accordance with section 112 of the Customs Act.

62. Regulations made for the prohibition of goods may set out the specified circumstances, conditions (including preconditions) and restrictions under which the goods are to be prohibited, including the formulation of those circumstances or preconditions.

63. New subsection 112(2AA) provides that regulations made for the purposes of section 112 may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

64. Similar to Item 12, the amendment made by this item makes clearer the operation and scope of section 112 to effect specified circumstances, conditions (including preconditions) and restrictions for the purposes of prohibiting the exportation of goods by explicitly making clear the Minister has the power to outline these matters by legislative instrument, where that power is conferred by the regulations. This puts beyond doubt the operation of section 112.

65. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify or assist the reader regarding the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers.

SCHEDULE 2 – FIREARMS AMENDMENTS

Part 1 National gun buyback

Division 1—National gun buyback

66. This Part provides for a legislative framework to establish a national gun buyback scheme as part of the national firearms program to support governments to purchase surplus and newly restricted firearms.

67. This scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the States (which is defined to include the Australian Capital Territory and the Northern Territory) to support their implementation of the national gun buyback scheme by way of reimbursements. The States will be responsible for the collection, processing and payment to persons for surrendered firearms.

68. The provisions under this Part incorporate mechanisms in section 16(1) of the *Federal Financial Relations Act 2009* (the FFR Act) and section 7 of the *Federation Reform Fund Act 2008* (the FRF Act) to make grants of financial assistance to the States to support the delivery of the national gun buyback scheme.

69. This model establishes a legislative framework for the national gun buyback scheme that, supported by the FFR Act and FRF Act, that recognises the split of responsibility between the Commonwealth and the States. Payments will be made in accordance with the terms and conditions set out in the Federation Funding Agreement schedules between the Commonwealth and the States. Payments made under these frameworks ensure the integrity of public funds paid to States through the included safeguards. While other relevant financial assistance and payments can be made to States under the FFR Act, the Bill also includes specific provisions outside the FFR Act for the Government to appropriate funds in the Consolidated Revenue Fund, allowing payments in connection to the national firearms program to be made to entities other than the States.

Item 1 Object of Part

70. This item inserts an objects provision which indicates an intention to rely on the implied nationhood power as a constitutional basis for the legislative scheme.

71. This item provides that the object of Part 1 is to provide for the Government of the Commonwealth, as the national Government of Australia, to implement a national gun buyback scheme in response to the antisemitic terrorist attack at Bondi Beach on 14 December 2025.

Item 2 Definitions

72. Subitem (1) explains what is meant by certain phrases that have been used in this Schedule.

73. Subitem (2) provides the ability to set an alternative buyback period, outside of the default buyback period of 1 January 2026 to 31 December 2027. This alternative buyback period is specific to each State and so must be based on the recommendation of the relevant police Minister of that State. Given the legal and other frameworks that the

States will need in place to support the National Gun Buyback Scheme (the Buyback Scheme), this flexibility is an important option for the States to ensure full and effective implementation of the Buyback Scheme.

74. Subitem (3) provides the AFP Minister with the power to set additional measures needed to support the objectives of the broader firearms reform, but that were not specifically contemplated by National Cabinet on 15 December 2025. While National Cabinet provided the high-level authority for, and objectives of, reform and, specifically, the Buyback Scheme, additional measures may be identified in future to provide necessary detail or otherwise support the implementation of the reforms.

75. An instrument made under this provision is intended to be a notifiable instrument in accordance with section 11 of the *Legislation Act 2003* (the Legislation Act). Notifiable instruments are used for matters of long-term public interest that are not legislative in character. This applies to instruments made under this item, as it enhances clarity and consistency in implementation of the national gun buyback scheme across the various jurisdictions. They must be registered on the Federal Register of Legislation to ensure public transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Item 3 Qualifying compensation paid by a State

76. Subitem (1) sets out the meaning of qualifying compensation. It provides that compensation paid by a State is considered qualifying compensation to the extent that the compensation is paid during the buyback period for the State under a compensation scheme:

- set up by the State to support the national firearms program; and
- approved by the AFP Minister under subitem (2).

77. Subitem (2) provides a power for the purposes of paragraph (1)(b) for the AFP Minister to, by notifiable instrument, approve a compensation scheme set up by a State to support the national firearms program. The intention is that this applies to each State individually to accommodate different timing to enact the necessary reform and to implement the national gun buyback scheme, while simultaneously ensuring fairness and consistency in implementation across jurisdictions.

78. An instrument made under this provision is a notifiable instrument for the purposes of section 11 of the Legislation Act. Notifiable instruments are used for matters of long-term public interest that are not legislative in character. This applies to instruments made under this item, as it enhances clarity and consistency in implementation of the national gun buyback scheme across the various jurisdictions. They must be registered on the Federal Register of Legislation to ensure public transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Item 4 Determination under *Federal Financial Relations Act 2009*

79. Subitem (1) provides that the Minister administering the *Federal Financial Relations Act 2009* (that is, the Treasurer or another Treasury Minister) must make a determination under subsection 16(1) of that Act in relation to a State in respect of reimbursement of

some of the qualifying compensation paid by the State, noting this cost is to be shared between the State and the Commonwealth.

80. This provides that a Treasury Minister is to determine that an amount specified under subsection 16(1) is to be paid to a State as a grant of financial assistance to support the implementation by the State of the national gun buyback scheme. Under the FFR Act, an amount subject to such a determination is credited to the Federation Reform Fund by, and subsequently debited for, the purposes of making the grant. The Federation Reform Fund is set up as a special account under the FRF Act for the purposes of making grants of financial assistance to States. Together, the FFR Act and the FRF Act provide a standing appropriation for the Commonwealth to provide financial support for the delivery of specific projects and outputs, such as the national gun buyback scheme. Under subsection 7(2) of the FRF Act, the terms and conditions of the grant of financial assistance are to be set out in a written agreement between the Commonwealth and the relevant State.

81. Subitem (2) clarifies that, if necessary, a Treasury Minister can make determinations for payment of specified amounts to States in connection with the implementation of the national firearms program which are not 'qualifying compensation' paid by the State. This may include, for example, the costs of storage and transportation before destruction.

Item 5 Other financial assistance and payments

82. This item provides the AFP Minister with the power to authorise payments not covered in Item 4.

83. Subitem (1) enables the AFP Minister to authorise payments in connection to the implementation of the national firearms program. This may include, for example, payments in relation to administration costs associated with the implementation of the national gun buyback scheme. The reference to 'activities' in this subitem is intended to provide a clear connection to the constitutionals heads of power contained in subitems (5)-(9) below.

84. Subitem (2) provides that subitem (1) does not apply in relation to a payment to a State. Such payments are provided for in Item 4 only.

Overall limit on payments under this item and AFP Minister's instrument

85. Subitem (3) establishes the need for a statutory cap on the financial authority of the AFP Minister, with subitem (4) requiring this cap to be set by the AFP Minister prior to making any payment under this item.

86. Together, these provisions ensure fiscal accountability and maintain appropriate parliamentary oversight, rather than the program being left to broad administrative discretion. This provides a transparent framework for public and parliamentary monitoring of the national gun buyback scheme's total cost.

87. An instrument made under this provision is intended to be a notifiable instrument in accordance with section 11 of the Legislation Act. Notifiable instruments are used for matters of long-term public interest that are not legislative in character. Given that these instruments relate to the use of public monies, it is important that these are available for transparency. They must be registered on the Federal Register of Legislation to ensure

transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Constitutional heads of power

88. The following sub-items cumulatively set out the relevant constitutional bases (i.e. heads of power) for payments made under this item:

- Subitem (5) – *Implied nationhood*
- Subitem (6) – *Defence power*
- Subitem (7) – *Corporations power*
- Subitem (8) – *Territories power*
- Subitem (9) – *Commonwealth places power*

89. Additionally, the Note under subitem (5) refers to item 1 (the objects provision), indicating that the nationhood power is intended to form one of the constitutional bases of the legislative scheme.

Appropriation

90. Subitem (10) establishes legislative authority to withdraw funds for specific purposes relating to the national gun buyback scheme outlined in this Part. This is an important mechanism that ensures parliamentary control over government spending as required under sections 81 and 83 of the Constitution. These sections operate together to require legislative authority for the appropriation of money from the Consolidated Revenue Fund.

91. To ensure constitutional compliance, this measure provides clear authority that payments under this Part are funded via a standing appropriation of the Consolidated Revenue Fund. This ensures the necessary legal authority for the executive to spend public money for the specific purpose of implementing the national gun buyback scheme.

Division 2—Consequential amendments

Income Tax Assessment Act 1997

Item 6 Subsection 995-1(1) (definition of *firearms surrender arrangements*)

92. Under the current law, compensation payments for individuals and businesses that surrender firearms as part of the national gun buyback scheme may be taxable in some circumstances. The tax implications depend on the circumstances of each affected taxpayer, for example, whether the firearm was privately owned or for business use.

93. This amendment expands the scope of the existing definition of *firearms surrender arrangements* to include the national firearms program, as defined in item 2 of Division 1 of Part 1 of Schedule 2 to the Bill. Noting that the details of the national gun buyback scheme have not been finalised at the time of introduction, the amendment will ensure that compensation payments received by a taxpayer under the national gun buyback

scheme for the surrender of an eligible firearm or loss of business are not assessable for income tax purposes. Specifically, the amendment ensures that:

- amounts received as compensation under the national gun buyback scheme which would otherwise be assessable income are treated as non-assessable, non-exempt income under section 59-10 of the *Income Tax Assessment Act 1997*;
- a capital gain made from compensation received under the national gun buyback scheme is disregarded under subsection 118-37(3) of the *Income Tax Assessment Act 1997*, and
- where compensation received under the national gun buyback scheme exceeds the adjustable value of a surrendered firearm, no amount will be included in assessable income via section 40-285 of the *Income Tax Assessment Act 1997* under section 40-289 of the *Income Tax (Transitional Provisions) Act 1997*.

Item 7 Application provision

94. This item provides that the new definition for firearms surrender arrangements applies to any income year in which a person receives compensation under the national gun buyback scheme.

Part 2 – Firearms Background Checks

Division 1 —AusCheck amendments

AusCheck Act 2007

Item 8 Subsection 4(1)

95. This item amends current subsection 4(1) of the AusCheck Act to insert several new defined terms to support the amendments of the AusCheck Act made by this Amendment Act. This item inserts definitions for ***CEO of ACIC, firearms background check, firearms licensing authority, law enforcement agency and national security agency.***

96. The term ***CEO of ACIC*** is defined to mean the Chief Executive Officer of the Australian Criminal Intelligence Commission (ACIC), as established by the *Australian Crime Commission Act 2002.* In order to furnish an 'adverse' criminal intelligence assessment in relation to a firearms background check, the CEO is referenced as needing to have a reasonable suspicion that preventing someone from holding a firearms licence is required to address a risk of a firearm being used in connection with serious and organised crime.

97. The term ***firearms background check*** is defined to mean a background check conducted under regulations made for the purposes of paragraph 8(1)(f). New paragraph 8(1)(f) expands the regulation-making power at section 8 to extend to the establishment of an AusCheck scheme to conduct and coordinate background checks of individuals in connection with a decision under a law of a state or territory about whether to issue, impose conditions, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or a national security agency in respect of an individual who holds a firearms licence.

98. The term ***firearms licensing authority*** is defined to have the same meaning given by regulations made for the purposes of this definition.

99. The term ***law enforcement agency*** is defined to mean a Commonwealth authority, or an authority of a state or territory, that has functions relating to law enforcement.

100. The term ***national security agency*** is defined to mean the Australian Security Intelligence Organisation, the Australian Criminal Intelligence Commission or any other agency of the Commonwealth prescribed by the regulations.

101. The purpose of this amendment is to support the use of these terms in amended subsection 8(1) and new section 10B which provides for the matters that the AusCheck scheme may make provision for in regulations made for the purposes of paragraph 8(1)(f).

Item 9 Paragraph 5(ba)

102. This item amends paragraph 5(ba) of the definition of ***background check*** to insert "or (f)" after "8(1)(a)".

103. Section 5 of the AusCheck Act provides the definition of a background check and paragraph 5(ba) provides that a background check conducted for the purposes of paragraph 8(1)(a) means any matters relevant to a criminal intelligence assessment (as defined in section 36A of the *Australian Crime Commission Act 2002*) of the individual.

104. New paragraph 8(1)(f) is the head of power to enable the *AusCheck Regulations 2017* (AusCheck Regulations) to provide for the establishment of a scheme relating to the conduct and coordination of background checks if the check is in connection with the decision under the law of a state or territory about whether to issue, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or national security agency in respect of an individual who holds a firearms licence.

105. The effect of this amendment is to provide that the definition of a background check conducted for the purposes of paragraph 8(1)(f) includes matters relevant to a criminal intelligence check, as defined in section 36A of the *Australian Crime Commission Act 2002* (ACC Act) (subsequent amendments in this Bill will amend this reference to Part III of the ACC Act).

Item 10 At the end of subsection 8(1)

106. This item inserts new paragraph (f) in subsection 8(1) of the AusCheck Act.

107. Subsection 8(1) of the AusCheck Act provides that regulations may provide for the establishment of an AusCheck scheme relating to the conduct and coordination of background checks of individuals for reasons specified in subsection 8(1).

108. New paragraph 8(1)(f) expands the purposes for which regulations may be made for the establishment of an AusCheck scheme.

109. The effect of new paragraph 8(1)(f) is to enable the regulations to provide for the establishment of an AusCheck scheme relating to the conduct and coordination of background checks of individuals if the check is of an individual in connection with a decision under the law of a state or territory about whether to issue a firearms licence to the individual or otherwise relating to the issue of the such a licence (including in relation

to conditions); or a decision about whether to renew, revoke, vary or suspend a firearms licence (subparagraphs 8(1)(f)(i) and (ii)).

110. The purpose of the amendments at subparagraphs 8(1)(f)(i) and (ii) is to legislate the head of power for the expansion of the AusCheck scheme to facilitate background checks for the purposes of supporting firearms licensing authorities making licensing decisions at any point in the life cycle of a firearms licence – including at the initial application stage, licence renewals and point-in-time checks that may factor into a decision to revoke, vary or suspend a firearms licence.

111. The effect of subparagraph 8(1)(f)(iii) further enables the regulations to provide for the AusCheck scheme being established to extend to the conduct and coordination of background checks of individuals in connection with an application by a law enforcement agency or national security agency for a background check of an individual who already holds a firearms licence.

112. The purpose of this amendment is to enable a law enforcement agency or a national security agency to make a proactive application for a background check on an 'own motion' basis in respect of an individual who already holds a firearms licence. This amendment recognises that changes to an individual's risk profile reflected by a background check may not align with licence renewal cycles, and that a current licence holder may become a concern of a national security or law enforcement agency at any point in time. The intention is to enable law enforcement or national security agencies to make an application for a firearms background check of that individual at that point in time rather than waiting for licence renewal. This creates a responsive firearms background checking scheme that can be triggered as appropriate, not just at renewal points or at the initial application stage, to enhance public safety, enable greater use of intelligence in firearms licensing processes, and, and prevent the misuse of firearms by high-risk individuals.

Item 11 After subsection 8(4)

113. This item inserts a new subsection 8(4A) into the AusCheck Act which provides that if paragraph 8(1)(f) applies, a firearms background check of an individual may only take into account the following matters provided in paragraphs (a) to (c).

114. The purpose of this amendment is to function as a reading down provision to provide certainty and clarity as to what checks are included in a firearms background check. Where regulations are made under paragraph 8(1)(f), a firearms background check of an individual may only consist of the following types of assessments/checks:

- an assessment by ASIO of the individual under the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) (paragraph 8(4A)(a));

- a criminal intelligence assessment within the meaning of Division 2A of Part II of the ACC Act (noting this reference to the ACC Act will be updated by subsequent amendments in this Bill) of the individual under that Act (paragraph 8(4A)(b)); and

- the citizenship status of the individual (paragraph 8(4A)(c)).

115. The purpose for inclusion of a security assessment from ASIO at paragraph 8(4A)(a), is to assess if the individual to whom the background check relates poses a threat to security. An adverse or qualified assessment may be given where the individual having access to firearms would not be consistent with the requirements of security.

116. The purpose for inclusion of a criminal intelligence assessment from the ACIC at paragraph 8(4A)(b), is to identify whether the individual has links to serious and organised crime and whether those links indicate, should the individual be granted a licence, that a firearm may be used in connection with serious and organised crime.

117. The purpose for inclusion of a citizenship check at paragraph 8(4A)(c) is to provide that regulations can provision for background checking processes where citizenship status is relevant to the consideration of a firearms licensing authority. This is primarily to accommodate two scenarios where an application for a firearms background check is made to AusCheck:

- The first is where a firearms licensing authority is not the applicant in relation to the firearms background check, and therefore no verification of that individual's citizenship status, which ordinarily would be conducted by the firearms licensing authority, would have occurred. In this circumstance, a firearms background check will include a citizenship status check by AusCheck of the individual before proceeding.

- The second scenario is where the Secretary believes on reasonable grounds that the individual's citizenship status is incorrect. For example, this may arise where an individual may have applied for a firearms licence but have since renounced their citizenship.

118. In these circumstances, a firearms background check will also include a citizenship status check by AusCheck of the individual before a background check has commenced or during a background check that is underway.

Item 12 After section 10A

119. This item inserts a new section 10B into Part 2 of the AusCheck Act. Section 10B sets out the matters that may be prescribed in the AusCheck Regulations for the firearms background checking scheme.

120. New subsection 10B(1) details the matters for which the AusCheck scheme made for the purposes of paragraph 8(1)(f) may provide or relate to.

121. The purpose of new subsection 10B(1) is to place appropriate limitations on the regulation-making power in relation to the AusCheck scheme for the purposes of firearms background checks. The matters specified for the purposes of subsection 10B(1), which may be prescribed in the regulations for the purposes of a firearms background check, are outlined below.

122. New paragraph 10B(1)(a) specifies that regulations may be made in relation to the making of an application for a firearms background check by a firearms licensing authority, a law enforcement agency or a national security agency.

123. New paragraph 10B(1)(b) specifies that regulations may be made in relation to the information that is to be contained in an application for a firearms background check

(including the requirements in relation to consent for the check). The reference to consent in this paragraph is intended to enable the regulations to provide coverage relating to the consent of the individual who is applying for their firearms licence, rather than the consent of the applicant (who might be state or territory firearms licensing authority, or law enforcement or national security agency) who applies for a background check in respect of that individual.

124. This paragraph is further supported by subsection 10B(3) below which provides that for the purposes of this paragraph 10B(1)(b), without limiting this paragraph, the circumstances in which an individual is taken to have given consent to another person making an application for a firearms background check of that individual.

125. New paragraph 10B(1)(c) specifies that regulations may be made in relation to the manner for conducting a firearms background check.

126. New paragraph 10B(1)(d) specifies that regulations may be made in relation to the criteria against which an application for a firearms background check is to be assessed.

127. New paragraph 10B(1)(e) specifies that regulations may be made in relation to the form of advice to be given to the applicant for a firearms background check.

128. New paragraph 10B(1)(f) specifies that regulations may be made in relation to the form of advice to be given to other persons about the status or outcome of a firearms background check (including any conditions relating to the advice being provided to other persons).

129. New paragraph 10B(1)(g) provides for regulations to be made in relation to any other matters relevant to a firearms background check.

130. New subsection 10B(2) provides that the matters referred to in subsection (1) may relate to all firearms background checks to be conducted for the purposes of paragraph 8(1)(f); or a specified class of such background checks conducted for the purposes of paragraph 8(1)(f). This provision provides scope for the regulations to determine what information may be assessed as part of the firearms background check.

131. New subsection 10B(3) provides that for the purposes of paragraph (1)(b), without limiting that paragraph, an individual is taken to have given consent to another person making an application for a firearms background check of the individual if:

- the individual has applied for a firearms licence (whether immediately before the firearms background check or at any previous time) (paragraph 10B(3)(a)); and

- before making the application for the firearms licence, the individual was advised by the person to whom that application was made, in accordance with the requirements (if any) specified in the regulations, that a firearms background check was a precondition to the issuing of the licence and maybe conducted at any time the licence is in force (subparagraphs 10B(3)(b)(i) and (ii))

132. The effect of subsection 10B(3) is that where an individual has applied for a firearms licence and if before making the application the individual was advised that a firearms background check was a precondition to the issuing of the licence and may be conducted at any time the licence is in force, they are taken to have given their consent to another

person to make an application for a firearms background check in respect of that individual.

133. This provision ensures that the element of consent to an AusCheck background check has been accounted for in legislation and ensures that a firearms licensing authority, a law enforcement agency or a national security agency who makes an application for a firearms background check in respect of the individual operate on the deemed consent of that individual when the individual applied for a firearms licence.

134. It is reasonably necessary to deem consent from licence holders to enable ad-hoc checks from law enforcement and national security agencies to function. Without deeming consent, agencies seeking ad-hoc checks risk compromising sensitive intelligence or operational information, as AusCheck would need to request that an individual to whom a background check relates consents to the check at the point it is requested. The deemed consent provision is a proportionate and necessary safeguard because it applies only to existing licence holders and relates to checks being undertaken for public safety purposes, ensuring operational effectiveness without unnecessary intrusion.

Item 13 Subsection 13(1)

135. This item omits "The" at the beginning of subsection 13(1) and substitutes "Subject to subsection (3), the".

136. Subsection 13(1) describes the circumstances where the collection, use and disclosure of personal information (other than identity verification information) is taken to be authorised by the AusCheck Act for the purposes of the *Privacy Act 1988*.

137. The purpose of this amendment is to make subsection 13(1) subject to new subsection 13(3) which has the effect of restricting the application of section 13 only to information collected about the individual who is, or has been subject to a firearms background check, for the purposes of a firearms background check. The overall effect of this amendment is to limit the scope of authorised collection, use and disclosure of personal information only to the individual who is the subject of the firearms background check.

Item 14 Paragraph 13(1)(a)

138. This item inserts "status or" before "outcome" in paragraph 13(1)(a) of the AusCheck Act.

139. This amendment updates the language in this provision to enable the collection, use and disclosure of information, as currently contemplated in section 13(1)(a), to take place in relation to advising on the status at a particular point in time of a background check in relation to an individual, as well as being able to do in relation to the outcome of the check.

140. This amendment is necessary noting that, under the firearms background checking scheme, AusCheck will have a discretion to provide advice to a firearms licensing authority that an individual is under review, which concerns their status at a particular point in time rather than a final outcome.

Item 15 At the end of section 13

141. This item inserts new subsection 13(3) and clarifies the application of section 13 in relation to firearms background checks. Subsection 13(3) provides that section 13 applies in relation to information (other than identity verification information) collected about an individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

142. The effect of new subsection 13(3) is to clarify that the authorisation for the collection, use and disclosure of personal information under section 13 applies only to information collected about an individual who is, or has been subject to a firearms background check, for the purposes of a firearms background check.

143. This amendment ensures that personal information collected, other than information of the individual who is or has been subject to a firearms background check, will not be able to be used under this section unless those individuals themselves become the subject of a firearms background check.

Item 16 At the end of subsection 14(1)

144. This item inserts a new note after subsection 14(1). Subsection 14(1) provides that the Secretary may establish and maintain a database (the AusCheck database) of information (other than identity verification information) that relates to the AusCheck scheme.

145. The purpose of this new note is to direct readers to new subsection 14(4) which provides for the limitations on the authorisation of retention and subsequent use and disclosure of information collected for the purposes of a firearms background check.

Item 17 At the end of section 14

146. This item inserts new subsection 14(4) at the end of section 14. Subsection 14(4) provides that section 14 only applies in relation to information (other than identity verification information) collected about an individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

147. The purpose of subsection 14(4) is to clarify that the authorisation for the retention and subsequent use and disclosure of information under section 14 only applies to information (other than identity verification information) collected about the individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

148. This amendment works with the previous two items to ensure that personal information collected, other than information of the individual who is or has been subject to a firearms background check, is only transmitted to ASIO and ACIC for contextual risk evaluation. It will not be able to be stored, retained or reused in the AusCheck database unless those individuals themselves become the subject of a firearms background check. Said information will be disposed of by AusCheck once ASIO and ACIC have confirmed it has been received.

Item 18 Transitional provision

149. This item is a transitional provision which states that despite the operation of new paragraph 10B(1)(b) inserted by this Part, an individual is taken to have given consent to another person making an application for a firearms background check of the individual if, immediately before the commencement of this item, the individual holds a firearms licence that is in force under a law of a state or territory.

150. Paragraph 10B(1)(b), as introduced earlier, enables the AusCheck scheme to provide, for the purposes of paragraph 8(1)(f), information that is to be contained in an application for a firearms background check (including in relation to consent for the check). Subsection 10B(3), also as introduced earlier, states that for the purposes of paragraph 10B(1)(b), an individual is taken to have given consent to another person making an application for a firearms background check of the individual under certain circumstances.

151. The effect of this provision is such that individuals who already hold a firearms licence before the commencement of this item, are taken to have consented to another person, such as a firearms licensing authority, a law enforcement agency or a national security agency, to apply for a firearms background check in respect of them under the AusCheck scheme. This is a deemed consent provision that is limited to individuals who hold a firearms licence immediately before the commencement of this item.

152. In relation to individuals who apply for a firearms licence following the commencement of the firearms background checking scheme, the standard provisions relating to consent will apply as built into the firearms background checking framework, including that of deeming consent at the time of licence application or renewal to allow for future ad-hoc background checks.

153. The note after this provision states that this section constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 (APP 6) of the *Privacy Act 1988*.

154. APP 6 states that an APP entity can only use or disclose personal information for which it was collected (the 'primary purpose'), or for a secondary purpose where an exception applies. This note makes clear that the exception at APP 6.2(b) is intended to apply, which enables the use or disclosure of personal information for a secondary purpose where that secondary use or disclosure of personal information is required or authorised by or under an Australian law.

155. The secondary use or disclosure of personal information authorised by this section is reasonable, necessary and proportionate to achieving the policy objectives of the Bill. This transitional provision is limited to individuals who already hold a firearms licence that is in force immediately before the commencement of this item. This limitation is both a necessary constraint to mitigate any privacy impacts, but also ensures that the firearms background checking scheme can commence promptly and that the law enforcement and national security agencies can begin making ad hoc applications for firearms background checks, using AusCheck, and having those outcomes incorporated into licensing decisions by firearms licensing authorities, without operational delay.

156. Conversely, the absence of this statutory authorisation would mean that AusCheck would be unable to facilitate a background check if requested by law enforcement and national security agencies on those who already hold active firearms licences, without those agencies or the firearms licensing authority re-engaging with an individual to seek their express consent of the individual. This could risk compromising sensitive intelligence and undermine the integrity of any ongoing investigations or operational activities, which may further undermine public safety and the integrity of the licensing regime.

Australian Security Intelligence Organisation Act 1979

Item 19 Subsection 39(3)

157. This item repeals the existing subsection 39(3) of the ASIO Act, and substitutes it with a revised subsection. The revised subsection will provide that subsection 39(1) of the ASIO Act does not prevent a Commonwealth agency from taking prescribed administrative action (as defined in paragraph 35(1)(h) of the ASIO Act):

- on the basis of a communication made under subsection 18(3) or 19A(4) to a staff member of the Commonwealth agency (paragraph 39(3)(a)); or

- without limiting paragraph (a), for the purposes of a firearms background check (as defined within the AusCheck Act).

158. Section 39 of the ASIO Act relates to preliminary advice from ASIO. Relevantly, subsection 39(1) provides a restriction which stipulates that a Commonwealth agency shall not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person that is made by ASIO which does not amount to a security assessment, or on the basis of an adverse or qualified security assessment made by ASIO before the commencement of the ASIO Act.

159. Also of relevance, the exercise of any power, or the performance of any function, in relation to decisions under a law of a state or territory about whether to issue or revoke a firearms licence, is described as 'prescribed administrative action' for the purposes of paragraph 35(1)(h) of the ASIO Act.

160. Taken together, this would have the effect of preventing or restricting AusCheck or a firearm licensing authority from taking any action in relation to a firearms licensing decision on the basis of any communication from ASIO that is not a security assessment or equivalent.

161. The proposed amendment to section 39(3) that this item provides would ensure that the existing restriction in section 39(1) does not apply for the purposes of a firearms background check, as defined within the AusCheck Act. This is to give effect to future amendments to the AusCheck Regulations, allowing ASIO to provide preliminary advice to inform firearms licence decisions by a firearms licensing authority.

162. In practice, it would enable ASIO, as a national security agency, to include a suggestion in relation to possible further action, such as suspending or cancelling or delaying approval of a licence, while the final assessments and outcomes of the background check

are still forthcoming. AusCheck would then provide that suggestion to a firearms licensing authority, who could choose to act on that suggestion.

163. This amendment would align the exceptions to subsection 39(1), in relation to the taking of prescribed administrative action by AusCheck or another Commonwealth agency, with the existing exceptions contained in subsection 40(1B), which apply to preliminary communications to either:

- a state or an authority of a state; or
- a Commonwealth agency for transmission to a state or an authority of a state,

164. for use in consideration of taking prescribed administrative action by the state or an authority of a state in respect of a person. In particular, this would align with the exception in paragraph 40(1B)(b) relating to action of a temporary nature that is of a kind described in paragraphs (g) or (h) of the definition of 'prescribed administrative action', which would include the suspension of a firearms licence by a state firearms licensing authority.

Division 2—ACC and ASIO amendments

Australian Crime Commission Act 2002

Item 20 Subsection 4(1) (at the end of the definition of *serious and organised crime*)

165. This note clarifies that a different definition of ***serious and organised crime***, as defined in section 52, applies only in the new Part III to the ACC Act.

Item 21 After paragraph 7A(d)

166. This item inserts 'to make and give criminal intelligence assessments (within the meaning of Part III) in accordance with that Part' into the list of functions of the Australian Crime Commission (also referred to as the ACIC) in section 7A of the ACC Act. This will clarify that the making and giving of criminal intelligence assessments under the new Part III to the ACC Act is a statutory function of the ACIC.

Item 22 Division 2A of Part II

167. This item specifies that the Division 2A of Part II to the ACC Act is to be repealed.

Item 23 Subsection 46A(8)

168. This item specifies that subsection 46A(8) of the ACC Act is to be repealed, noting it is made redundant by the amendment made by item 4 which repeals Division 2A of Part II to the ACC Act. The amendment made by Item 3 will clarify that the making and giving of criminal intelligence assessments under the new Part III to the ACC Act is a statutory function of the ACIC.

Item 24 After Part II

169. This item inserts a new Part III into the ACC Act which will establish a revised criminal intelligence assessment framework.

170. The new Part III will make targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework to enable the ACIC to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks, in addition to the existing function relating to aviation and maritime security identification cards.

Part III—Criminal intelligence assessments

171. The new Part III to the ACC Act will enable the ACIC to make and give criminal intelligence assessments to inform certain background checks undertaken by AusCheck, including to determine the eligibility of individuals to access certain secure environments and to possess a firearms licence. This Part is based on Division 2A of Part II to the ACC Act, which was introduced by the *Transport Security Amendment (Serious Crime) Act 2021*.

172. In making a criminal intelligence assessment, the ACIC will assess, by reference to ACIC intelligence and information, whether it would be consistent with preventing the advancement of serious and organised crime for prescribed administrative action to be taken, or not taken, in respect of a person. The exact form of prescribed administrative action is provided for by the legislation pursuant to which background checks are required or permitted.

173. Criminal intelligence assessments complement other types of background checks that are undertaken to inform the eligibility of individuals to access certain secure environments or to hold a firearms licence, including ASIO's security assessments. They recognise that the ACIC may hold particular information with regards to serious and organised crime, that may not be captured by the other parts of a background check relevant to a particular AusCheck scheme, such as identity checks, nationally coordinated criminal history checks and security assessments. In this way, they seek to expand the scrutiny that a person is afforded during the background check process, to prevent them using access to these environments or the possession of a firearm in ordered to prevent the advancement of serious and organised crime.

174. Consistent with the existing criminal intelligence assessment framework, Part III of the ACC Act will enable the ACIC to make and give criminal intelligence assessments for purposes related to background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Prescribed administrative action under these Acts currently includes the non-provision or cancellation of aviation security identification cards (ASIC) and maritime security identification cards (MSIC).

175. Part III of the ACC Act will also expand the application of the ACIC's criminal intelligence assessments to inform background checks for firearms licensing decisions under state and territory firearms legislation, or any instrument made under that legislation. The exact form of prescribed administrative action would be determined by the states and territories firearms law, but could include a decision on whether or not to issue a new firearms licence, including the imposition of conditions on that licence, or a decision to renew, revoke, vary or suspend an existing firearms licence.

176. Additionally, Part III of the ACC Act will introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks required or

permitted by an Act prescribed by the *Australian Crime Commission Regulations 2018* (ACC Regulations), or a legislative instrument under the Act prescribed by those regulations. This seeks to recognise the risk that serious and organised crime plays within other environments and sectors by enabling the criminal intelligence assessments to be made for the purposes of background checks required by emerging schemes as appropriate.

177. Part III will also provide legislative authority for the ACIC to use automated decision-making for certain types of criminal intelligence assessments, being non-adverse criminal intelligence assessments, where no results were returned against a person in a search of certain ACIC intelligence holdings, in line with instructions issued by the Chief Executive Officer (CEO) of the ACIC. The practical effect of this approach is that automated decision-making will only be used where it is beneficial to the applicant, for example, where it is appropriate for the applicant to access certain secure environments or have possession of a firearm, from a criminal intelligence assessment perspective.

178. Part III will also provide notification requirements, and the ability to apply for Administrative Review Tribunal (ART) review of an adverse criminal intelligence assessment, unless that assessment relates to a firearms background check.

Division 1—Preliminary

179. Division 1 contains definitions for the purposes of the new Part III to the ACC Act and provides further explanation about the meaning of core definitions for this Part.

Section 52 Definitions

180. This section contains definitions that are used in this Part.

181. The section introduces the definition of background check which has the same meaning as in section 5 of the *AusCheck Act 2007* (AusCheck Act). A background check, in relation to an individual, is an assessment of information relating to one or more specified activities, including matters relevant to an ACIC criminal intelligence assessment and ASIO security assessment.

182. This section introduces the definition of ***firearms background check*** which has the same meaning as in the AusCheck Act. A firearms background check is defined to mean a background check conducted under regulations made for the purposes of paragraph 8(1)(f) of the AusCheck Act. Paragraph 8(1)(f) establishes an AusCheck scheme to conduct and coordinate background checks of individuals in connection with a decision under a law of a state or territory about whether to issue, impose conditions, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or a national security agency in respect of an individual who holds a firearms licence.

183. This section provides an updated definition of **law enforcement or intelligence interests**, formerly ‘law enforcement interests’. Law enforcement or intelligence interests may inform decisions relating to the making of criminal intelligence assessments and the disclosing of particular information in, or relating to, a criminal intelligence assessment. Law enforcement or intelligence interests is defined in a non-exhaustive manner to include interests in one or more of the following:

- Paragraph (a) specifies interest in 'avoiding prejudice or disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence'—this paragraph reflects the importance of protecting ongoing investigations, partnerships and other efforts (including transnational efforts) directed at preventing and investigating crime, safeguarding security, and protecting and promoting Australia's national security and national interests;

- Paragraph (b) specifies interest in 'protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence'—this paragraph reflects the importance of protecting sensitive technologies and methods used by agencies, the compromise of which can affect multiple operations and can risk enduring and significant intelligence losses;

- Paragraph (c) specifies interest in 'the protection and safety of informants and of persons associated with informants'—this paragraph reflects that the compromise of information concerning informants can have grave implications for the safety of those persons and their associates, as well as potentially enabling a sophisticated actor to identify other informants, and having broader ramifications for the willingness of persons to serve as informants in the future;

- Paragraph (d) specifies interest in 'ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies'—this paragraph reflects the importance of information and intelligence-sharing arrangements between agencies and nations, in particular to combat transnational or foreign criminal enterprises and organisations;

- Paragraph (e) specifies interest in 'avoiding disclosure of lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'—similar to paragraph (b), this paragraph reflects the importance of protecting lawful methods and procedures use to prevent, detect, investigate or deal with crime, to ensure their ongoing efficacy.

184. These amendments include in paragraph (a) of the definition of law enforcement or intelligence interest the consideration of 'avoiding prejudice', in addition to 'avoiding disruption' 'to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence'. The addition of 'avoiding prejudice' is to ensure that criminal intelligence which is not-ongoing is captured by this definition, for example criminal intelligence that is received at a point in time and related to a time limited event. The intent of the word prejudice is that it is point in time neutral and allows the CEO to exercise greater judgement on what may be included. This updated definition captures intelligence interests, as well as law enforcement interests. The intention of this definition is that it would capture ACIC intelligence as well as administrative documents/information within the ACIC's holdings.

185. This definition is included for the purpose of various provisions that restrict the disclosure of documents and information used by the ACIC to prepare criminal intelligence assessments, based upon the accepted grounds for which a public interest immunity claim may be made.

186. This section notes a revised definition of prescribed administrative action which has the meaning given by section 54A. The details of the revised definition are dealt with below, but the key change will be to introduce new forms of prescribed administrative in relation to firearms licensing decisions under state or territory law.

187. This section notes a revised definition of serious and organised crime which has the meaning given by section 54B. The details of the revised definition are dealt with below, but the key change will be to introduce a temporal element which aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase, in relation to exercising its criminal intelligence assessment function introduced by Part III.

188. This section also notes the new definition of specified criminal intelligence assessment action which is defined under section 54G and refers to a specific action which may be undertaken by computer program in relation to an assessment for the purposes of Part III of the ACC Act. This definition has been inserted to provide a legislative basis for the use of automated decision-making for specified actions under subsections 54C(6) and 54D(2) of Part III of the ACC Act, being certain criminal intelligence assessments that are not adverse.

Section 53 Meaning of *criminal intelligence assessment*

189. This clause will define what the term criminal intelligence assessment, sometimes referred to as an assessment, is intended to capture. The definition of criminal intelligence assessment is complimented by thresholds contained within the legislation and regulations to which the particular background check relates (for example, section 6.28 of the *Aviation Transport Security Regulations 2005* (ATS Regulations) under the ATS Act, for the purpose of an ASIC background check).

190. The definition of criminal intelligence assessment is based on previous section 36A of the ACC Act. The definition provides a broad description of what a criminal intelligence assessment is, to ensure the definition operates effectively alongside the thresholds contained in other relevant legislation and regulations, including the ATS Act, the MTOFS Act and their respective regulations, as well as the AusCheck Act.

191. The words 'recommendation, opinion or advice' contained in section 53(1) are intended to take their ordinary meanings, however, must be contained within a written statement. For example, this could include a suggestion or proposal as to the best course of action, view or judgement formed in relation to the question, or any statement of advice which may offer guidance as to the most appropriate course of action in relation to the assessment. The words 'recommendation, opinion or advice' are to be read in conjunction with the words 'otherwise referring to the question'. This phrase is also intended to take its ordinary meaning and would capture any other forms of communication (i.e. beyond a recommendation, opinion or advice) that are made in reference to the question of whether it is consistent with preventing the advancement of serious and organised crime for prescribed administrative action to be taken, or not to be taken, in respect to a person.

192. Also under section 53(1), 'Consistent with' is intended to take its ordinary meaning, and would capture a criminal intelligence assessment made, for example, in line with the principles of, or are done with the aim of, preventing, avoiding or stopping the advancement of serious and organised crime.

193. ‘Advancement’ in section 53(1) is intended to encompass acts that may enable, progress and lead to serious and organised crime. For example, in the context of a criminal intelligence assessment for the purpose of a background check for an ASIC, advancement may capture scenarios where ACIC intelligence suggests that the individual to who the background check relates may use access to secure aviation environments to advance serious and organised crime (as defined by section 54B), such as by trafficking illicit drugs, precursor chemicals, tobacco or firearms.

194. In these scenarios, the ACIC would not necessarily need to consider that the individual to who the background check relates themselves would use this access to commit serious and organised crime, but rather that they may exploit access to secure environments to advance serious or organised crime. For example, creating vulnerabilities within a secure aviation environment, making it more susceptible to serious and organised crime.

195. A further example, in the context of a criminal intelligence assessment for the purpose of a firearms background check, advancement may capture scenarios where ACIC intelligence suggests that the individual to who the background check relates may use access to a firearm to advance serious and organised crime activities, for example illicit drug ventures.

196. The definition of serious and organised crime for the purposes of Part III is contained within section 54B. The definition of prescribed administrative action is contained at section 54A.

197. Section 53(2) is an avoidance of doubt clause, to clarify when a communication is considered a criminal intelligence assessment, and when it is not. This is important for other parts of the criminal intelligence assessment scheme, including the definition of ‘adverse criminal intelligence assessment’ under section 54 and section 54F which precludes other agencies from taking prescribed administrative action on the basis of any communication from the ACIC which does not amount to a criminal intelligence assessment. The intent of this text is to prevent the ACIC making any qualifications or comments that could potentially be prejudicial to an individual, without being subject to the relevant criminal intelligence assessment threshold and safeguards, such as available review mechanisms.

Section 54 Meaning of *adverse criminal intelligence assessment*

198. This clause will define what the term adverse criminal intelligence assessment is intended to capture, being a criminal intelligence assessment, as defined in section 53, that contains:

- any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person, and

- a recommendation that ‘prescribed administrative action’ (as defined at section 54A) be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

199. The definition of ***adverse criminal intelligence assessment*** is modelled on the equivalent definition in Division 2A of Part II to the ACC Act.

200. The terms ‘any opinion or advice, or any qualification of any opinion or advice, or any information’ under paragraph (a) are intended to take their ordinary meaning. For example, this could include a view or judgement formed in relation to the question, or any statement of advice which may offer guidance as to a course of action in relation to the assessment. This includes any qualified opinion or advice, which would include any statement that expresses some level of uncertainty about its own accuracy and is not taken to be definitive, though may still be prejudicial. This also includes any information, which may include anything that has the power to inform a prejudicial view against the interests of the person.

201. ***Prejudicial to the interests of the person*** in paragraphs (a) and (b) is intended to include any opinion or advice, any qualification or information, or any recommendation that is adverse to the interests of a person because it has the potential to influence prescribed administrative action being taken.

202. An adverse criminal intelligence assessment may be given by the CEO, for example in relation to a ASIC or MSIC background check, in circumstances where the ACIC is satisfied that there is intelligence or information that suggests the person may use access to secure environment to commit a serious and organised crime, such as smuggling illicit tobacco, or may assist another person to commit such a crime, such as by tampering with cargo manifests.

203. An adverse criminal intelligence assessment may also be given by the CEO, for example in relation to a firearms background check. This applies in circumstances where the CEO of the ACIC reasonably suspects that preventing the individual from holding a firearms licence is necessary to address a risk that a firearm may be used in connection with serious and organised crime. For example, enabling the trafficking of illegal goods, or assisting another person to commit such a crime by supplying firearms for these purposes.

204. The definition of prescribed administrative action is contained at section 54A.

Section 54A Meaning of *prescribed administrative action*

205. This clause will define what the term prescribed administrative action is intended to capture.

206. ***Prescribed administrative action*** is defined with reference to specific legislation, as the exact form of prescribed administrative action is provided for by the legislation pursuant to which background checks are required or permitted (e.g. the ATS Act, the MTOFS Act and their respective regulations, or the AusCheck Act).

207. Subsection 54A(1) extends the definition of prescribed administrative action to include the exercise of powers or functions in relation to decisions regarding a firearms licence under state or territory law. This subsection is modelled on the definition of ‘prescribed administrative action’ in paragraph (h) of section 35 of the ASIO Act. A criminal intelligence assessment that is furnished on AusCheck, a Commonwealth authority, may concern the exercise of powers or functions in relation to decisions regarding a firearms licence under state or territory law where, for example, the assessment contains a recommendation, advice or opinion, or otherwise refers to the question of whether a firearms licence should be issued, revoked or suspended.

208. Subsection 54A(1)(a) will capture action such as the issuing of a new firearms licence and other actions relating to the issuing of such a licence, including the imposition of conditions.

209. Subsection 54A(1)(b) will capture action such as the renewal, revocation, variation or suspension of an existing firearms licence.

210. Subsection 54A(2) maintains the types of prescribed administrative action relevant to the non-provision or cancellation of an ASIC or MSIC to a person in circumstances where an adverse criminal intelligence assessment has been given.

211. Paragraph 54A(2)(a) will capture action such as the non-provision or cancellation of certain classes of ASICs and MSICs that, once issued, permit the person to have unescorted access to secure areas of security controlled airports and maritime security zones.

212. Paragraph 54A(2)(b) will capture action such as the non-provision or cancellation of certain classes of ASICs and MSICs, based on the person's ability to perform an activity under a certain class of ASIC or MSIC that is controlled or limited. For example, white ASICs and MSICs are issued to individuals who are directly involved in the issuing of identification cards to other individuals.

213. As per subparagraphs 54A(2)(a)(iii) and (2)(b)(iii), the definition of prescribed administrative action will include actions that limit a person's access to a place or ability to perform an activity limited under any other Act prescribed by the ACC Regulations or a legislative instrument under that Act, to allow future prescribed administrative action to be added by regulations. This is important to futureproof and allow for the criminal intelligence assessment function to be expanded in consideration of new or emerging risks for the purposes of other forms of background checks in line section 5 of the Auscheck Act, without requiring legislative amendments. Any expansions would still be subject to legislative scrutiny through changes to the Auscheck Act to facilitate this.

Section 54B Meaning of *serious and organised crime*

214. This section will define what the term serious and organised crime is intended to capture, specifically in relation to Part III of the ACC Act.

215. This definition of ***serious and organised*** crime intends to capture federal offences that may have been committed, may presently be being committed or may be committed in the future. In recognition of the findings of the Independent Review of the ACIC and associated Commonwealth law enforcement arrangements, the inclusion of this temporal element aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase in relation to exercising its criminal intelligence assessment function.

Serious and organised crime

216. Subsection 54B(1) sets out the elements which constitute serious and organised crime. Serious and organised crime involves a certain level of organisation, sophistication and seriousness. Together, these elements broadly speak to the nature and scale of offending

that is considered to amount to serious and organised crime. In order for crime to meet the definition of serious and organised crime, it must involve all of the following elements:

- two or more offenders,
- substantial planning or organisation, and
- the use of sophisticated methods or techniques.

217. The element of 'two or more offenders' under paragraph 54B(1)(a) establishes a minimum level of organisation in relation to the criminal activity. The sophisticated and expansive nature of serious and organised crime requires the involvement of more than one person to carry out the criminal activities. Serious and organised crime relies on the cooperation, coordination and organisation of multiple individuals or groups, often with different skills. For example, the importation, distribution and sale of illicit drugs requires coordination of multiple individuals in order circumvent border controls, domestic transport and postal security measures and to launder the proceeds from these crimes.

218. Paragraph 54B(1)(b) establishes that serious and organised crime requires 'substantial planning or organisation'. It is intended to capture circumstances where thorough, detailed and extensive planning or organisation is or has been undertaken in relation to the criminal activity. Serious and organised crime groups are not typically formed for the immediate or opportunistic commission of an offence, and their offending is often ongoing and systemic. However, serious and organised crime groups are also dynamic and have developed fluid organisational structures and modes of operation to carry out criminal activity and evade detection by law enforcement agencies. Criminal actors who engage in serious and organised crime do not need to have formally defined roles for their members, continuity of membership or a developed structure. Increasingly, there has been a shift towards a more flexible organisational model, characterised by 'loose associations', which allows group members to be added or discarded according to organisational needs.

219. Paragraph 54B(1)(c) establishes that serious and organised crime involves 'the use of sophisticated methods or techniques' to support and carry out criminal activity. It is intended to capture actions that include, but are not limited to, use of new and emerging technologies, fraudulent activity (which might include using a fake or stolen identity) implementing concealment techniques to facilitate the trafficking of illicit goods and laundering proceeds of crime through a web of complex financial transactions.

Federal offence

220. Subsection 54B(2) will provide the definition of federal offence, which includes three categories of offences which are punishable by imprisonment for 2 years or more or prescribed by regulations. The categories of offences are:

- An offence against the law of a Commonwealth. This could include, but is not limited to, an offence under the Criminal Code punishable by imprisonment for 2 years or more.
- An offence against the law of a territory. This could include, but is not limited to, an offence under the *Crimes Act 1900* (ACT) punishable by 2 years' imprisonment or more.

- An offence against the law of a state that has a federal aspect, as defined in section 4A of the ACC Act.

221. The penalty of imprisonment for a period of two years or more in paragraph 54B(2)(d) sets a minimum level of offending in order for an offence to be captured by the definition of 'serious and organised crime'. The intention of setting a minimum penalty of two years imprisonment is to ensure that only more serious offending is captured. The offence penalty only forms one element of the definition of serious and organised crime, which should be considered as a whole, taking into account all the specified characteristics across subsections 54B(1) and (2).

222. Paragraph 54B(2)(e) provides that offences can be prescribed in the ACC Regulations as a federal offence. This provides the ACIC with a level of flexibility to prescribe certain offences in rare circumstances where the offences are considered to be serious and organised crime but do not otherwise meet the two year penalty period in paragraph 54B(2)(d).

Division 2—Criminal intelligence assessments

223. Division 2 provides for the conduct of criminal intelligence assessments by the ACIC for purposes related to specified background checks, including notification requirements. This Division is somewhat modelled on Division 2A Subdivision B of the ACC Act, with amendments to clarify who may undertake certain actions and the purposes for which the ACIC may make and provide a criminal intelligence assessment, and when certain assessments may be made by way of automated decision-making. Division 2 will also expand the purposes for which the ACIC may make and give a criminal intelligence assessment, including for the purpose of a background check related to a firearms licensing decision.

224. This Division will enable the ACIC to both make and provide criminal intelligence assessments that are not adverse criminal intelligence assessments. It will further enable the ACIC to make adverse criminal intelligence assessments, and the CEO to give adverse criminal intelligence assessments. Elevation of the decision-maker with regards to giving adverse criminal intelligence assessments recognises the importance of such an assessment and the impact it may have on the subject of the assessment.

<u>Section 54C Making criminal intelligence assessments</u>

General

225. Section 54C will enable the ACIC to make criminal intelligence assessments and is similar to section 36B of the ACC Act.

226. Paragraph 54C(1)(a) introduces the ability of the ACIC to make a criminal intelligence assessment for a firearms background check. Complementary amendments to the AusCheck Act will establish a new AusCheck scheme for the conduct and coordination of firearms background checks. Together, paragraph 54C(1)(a) and the complementary amendments to the AusCheck Act will enable the ACIC to make criminal intelligence assessments for the purposes of firearms background check to inform the firearms licensing decisions of states and territories.

227. Subparagraphs 54C(1)(b)(i) and (ii) will specify the ATS Act and ATS Regulations, as well as the MTOFS Act and *Maritime Transport and Offshore Facilities Security Regulations 2003* (MTOFS Regulations). This means that the ACIC will continue to be able to undertake criminal intelligence assessments as part of the background check process in the ASIC and MSIC schemes, established under the ATS Act and MTOFS Act, and their respective regulations.

228. Subparagraph 54C(1)(b)(iii) will also specify 'an Act prescribed by the regulations for the purposes of subparagraphs 54A(a)(iii) or (b)(iii), or a legislative instrument under that Act'. This will enable the ACIC to conduct a criminal intelligence assessment in relation to any additional background checks within the meaning of section 5 of the AusCheck Act that are prescribed by the ACC Regulations. This seeks to provide additional flexibility in the framework by enabling the criminal intelligence assessments to be made for the purposes of background checks required by emerging schemes as appropriate.

229. The term ***make*** used in subsection 54C(1) is intended to capture all acts in the preparation and finalisation of a criminal intelligence assessment. This would include, for example, the initial steps of conducting a criminal intelligence assessment, through to the formulation and finalisation of the official recommendation, opinion or advice.

230. Subsection 54C(2) provides that the CEO may, by legislative instrument, determine the matters that are to be taken into account when making a criminal intelligence assessment, the manner in which those matters are to be taken into account, and the matters that are not to be taken into account. Enabling further matters to be specified in a legislative instrument will ensure the necessary flexibility to account for the dynamic issues which may become relevant to a criminal intelligence assessment, while also maintaining transparency about the matters to be considered.

231. Subsection 54C(2) does not require such a legislative instrument to be made by the CEO before a criminal intelligence assessment can be conducted by the ACIC under subclause 54C(1).

232. To ensure appropriate oversight of the CEO's power to make a legislative instrument under subsection 54C(2), subsection 54C(3) provides that the CEO must consult with the Minister prior to making the legislative instrument.

233. Subsection 54C(4) will provide the ACIC with discretion to choose to not to make an adverse criminal intelligence assessment if doing so would prejudice law enforcement or intelligence interests (as defined in section 52). This is an important safeguard to ensure both the protection of law enforcement and intelligence efforts. The ACIC may choose not to make an adverse criminal intelligence assessment where, for example, the ACIC holds criminal intelligence with regards to an applicant for an ASIC or MSIC and this intelligence relates to an active law enforcement investigation. In this scenario, making an adverse criminal intelligence assessment would likely alert the applicant to the possibility of the law enforcement investigation into the applicant, undermining the investigation. In this situation, this clause will enable the ACIC to not make the assessment until the law enforcement investigation would not be compromised.

234. Subsection 54C(5) will clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current

or previous background check of a person that is required or permitted by the Acts specified in subsection 54C(1), or legislative instruments made under those Acts.

235. This will clarify that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at the ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than at the point of an application or renewal application.

Certain criminal intelligence assessments that are not adverse

236. Subsection 54C(6) will provide that the ACIC must make a criminal intelligence assessment that is non-adverse if the person is not identified in a search of intelligence held by ACIC that is conducted in accordance with the instructions issued by the CEO under subsection 54C(7). This subclause has been inserted to enable the ACIC to conduct certain criminal intelligence assessments by way of computer.

237. The note after subsection 54C(6) will make clear that the CEO can arrange for the use of computer programs in accordance with this subsection, pursuant to section 54G, which provides additional detail as to automation of decisions.

238. Subsection 54C(7) will require the CEO of the ACIC to make instructions about how a criminal intelligence assessment may be made by a computer. These instructions will provide objective criteria against which the computer would search.

239. These instructions, by their nature, will provide highly sensitive information regarding ACIC criminal intelligence holdings. It would be inappropriate to make this information public as it could greatly prejudice law enforcement and intelligence interests. In particular, publishing instructions concerning how the ACIC undertakes criminal intelligence assessments would enable persons engaged in or associated with serious and organised criminal activities to take steps to reduce the likelihood that those activities will be detected during a background checking process. This would, in turn, increase the likelihood that such persons would gain unescorted access to secure zones of airports, seaports and offshore oil and gas facilities that are subject to the ASIC/MSIC background checking framework, or be able to obtain or maintain a firearms licence, which would substantially compromise the ACIC's role in preventing the advancement of serious and organised crime.

240. For these reasons, as is provided for by subsection 54C(8), the CEO's instructions will not be a legislative instrument and will be exempt from the *Legislation Act 2003*. They will also not otherwise publicly available, however the content of, and adherence to these instructions will be subject to independent oversight by the Commonwealth Ombudsman or, following the commencement of Schedule 1 to the *Strengthening the Oversight of the National Intelligence Community Act 2025*, the Inspector-General of Intelligence and Security.

Section 54D Giving of criminal intelligence assessments to Commonwealth agencies

241. This clause seeks to clarify whose role it is to give criminal intelligence assessments, being the ACIC for non-adverse criminal intelligence assessments as per subsection

54D(1), and the CEO to cause an adverse criminal intelligence assessment to be given as per subsection 54D(3).

242. The terminology ‘give’ is intended to mean to issue, provide, furnish or forward an assessment. The term ‘give’ is used for consistency with the *Acts Interpretation Act 1901* in relation to serving documents and in the *Electronic Transactions Act 1999* in relation to giving information by means of an electronic communication.

Criminal intelligence assessments that are not adverse

243. Subsection 54D(1) provides for the ACIC to give a Commonwealth agency a non-adverse criminal intelligence assessment in respect of a person, in relation to a background check required or permitted by the legislation or legislative instruments prescribed by subsection 54D(1).

244. Subsection 54D(2) will provide that the ACIC must give a criminal intelligence assessment that is non-adverse to the relevant Commonwealth agency if the person is not identified in a search of intelligence held by ACIC that is conducted in accordance with the instructions issued by the CEO (see 54C(6)). This subclause has been inserted to enable the ACIC to give certain criminal intelligence assessments by way of computer, by providing objective criteria against which certain criminal intelligence assessments may be given.

245. This will enable certain non-adverse assessments to be fully automated. For example, a computer may conduct a search of certain ACIC intelligence holdings, and if no results are found in relation to a person in this search in accordance with subsection 54C(6), the computer may then give a ‘no adverse result’ to Auscheck.

246. The note under subsection 54D(2) will make clear that the CEO can arrange for the use of computer programs in accordance with this subsection, pursuant to Division 3 which provides additional detail as to automation of decisions.

Adverse criminal intelligence assessments

247. Subsection 54D(3) provides that the CEO must cause an adverse criminal intelligence assessment to be given in respect of a person to Commonwealth agencies, in relation to a background check required or permitted by the Acts specified in subsection 54D(3), or legislative instrument made under those Acts.

248. The power for the CEO to cause an adverse criminal intelligence assessment to be given in respect of an individual is non-delegable. It is appropriate for this decision-making power to sit with the CEO, noting that the giving of an adverse criminal intelligence assessment may impact the applicant's ability to work in secure aviation and maritime environments or hold a firearms licence.

249. If the CEO causes an adverse criminal intelligence assessment to be given, the CEO or the ACIC will give the adverse assessment together with a statement of grounds to the Department of Home Affairs. In the context of a ASIC or MSIC background check, the Secretary of Home Affairs is required to advise the issuing body (r 13(4A) of the AusCheck Regulations) and the person will become ineligible to hold an ASIC or MSIC

(r 6.28(1)(ea) of the ATS Regulations; r 6.08C(1)(da) of the MTOFS Regulations) or any other type of access as prescribed by the rules.

250. In the context of a firearms background check, the Secretary of Home Affairs may advise the applicant, being the firearms licensing authority where the person to who the background check relates holds a licence or has applied for one, and the firearms licensing authority would determine a course of action regarding the relevant firearms licensing decision under relevant state or territory firearms legislation.

251. Subsection 54D(4) provides that, if the CEO considers that giving a Commonwealth agency an adverse criminal intelligence assessment in respect of a person would prejudice law enforcement or intelligence interests, the CEO may decide not to cause the assessment to be given to the agency. This is an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts.

252. The effect of subsection 54D(4) is that, for example, if the CEO considers that the giving of an adverse criminal intelligence assessment to AusCheck would risk the safety of a criminal informant (as captured in paragraph (c) of the definition of 'law enforcement or intelligence interests' in section 52), then the CEO may decide to not give that assessment. Law enforcement or intelligence interests as defined in section 52 would, for example, encapsulate protecting interests in ongoing collection of criminal intelligence.

253. Subsection 54D(5) outlines the documents that the CEO must ensure are provided to a Commonwealth agency when giving an adverse criminal intelligence assessment. Under this subclause, the CEO is required to provide:

- a statement of grounds for the assessment that meets the requirements of subsection 54D(6), which is taken to be part of the assessment, and

- a copy of a certificate, if any, made by the CEO in relation to the information contained under the assessment under subsection 54D(7).

254. These documents are required to be in writing, to facilitate accurate record-keeping which is essential for accountability, administrative review and oversight purposes.

255. Subsection 54D(6) will outline what must be contained in a statement of grounds for an adverse criminal intelligence assessment. The statement of grounds must contain all of the information relied upon in making the assessment, other than information in relation to which the CEO has made a certificate under subsection 54D(7) and information the disclosure of which would be contrary to a law of the Commonwealth, a state or a territory.

256. The reference to 'information the disclosure of which would be contrary to a law of the Commonwealth, a State or a Territory' in paragraph 54D(6)(b) ensures that, if any information relied upon is subject to non-disclosure provisions under Commonwealth, state or territory law, the CEO is not required to disclose that information to AusCheck when giving an adverse criminal intelligence assessment.

257. Subsection 54D(7) will provide the CEO with the power to make certificates relating to criminal intelligence assessment information. The CEO may certify, in writing, that he or she is satisfied that disclosing particular information contained in an adverse criminal

intelligence assessment to the person in respect of whom the assessment was made would be prejudicial to law enforcement or intelligence interests or security. Law ***enforcement or intelligence interests*** is defined in section 52 and would, for example, encapsulate protecting interests in ongoing collection of criminal intelligence. Security is defined in section 52 to have the same meaning as in the ASIO Act.

258. Subsection 54D(7) provides an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts, as well as security. The making of such a certificate could occur, for example, where the release of certain information may alert the applicant to the possibility of telecommunications interception by the ACIC or undermining the ACIC's broader intelligence collection efforts.

259. Subsection 54D(8) provides that, if the CEO makes a certificate under subsection 54D(7), the CEO can choose to not to provide the information about which the certificate was made to the relevant Commonwealth agency. If the CEO chooses not to provide such information, this subsection also provides that the Minister, after consulting with the CEO, may direct the CEO to provide the information. The Minister is not required to make this direction in writing.

260. Subsection 54D(9) is a statement of law in respect of certificates, which clarifies that a certificate made by the CEO under subsection 54D(7) is not a legislative instrument and is intended to assist readers. This is because any certificate issued by the CEO under subsection 54D(7) amounts to the application of the law in a particular only in instance to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

261. Subsection 54D(10) is a statement of law in respect of ministerial directions under subsection 54D(8), which clarifies that a direction of the Minister under subsection 54D(8), if made in writing, is not a legislative instrument and is intended to assist readers. This is because any such direction does not alter the content of the law but applies it in a particular instance in relation to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

<u>Section 54E Person to be notified of adverse criminal intelligence assessment</u>

262. Section 54E is based on previous section 36D of the ACC Act, and will provide for the giving of written notice of an adverse criminal intelligence assessment to the person who is the subject of the assessment.

263. Subsection 54E(1) will require that the Commonwealth agency that has been given an adverse criminal intelligence assessment under subsection 54D(3) must, unless the Minister has made a certificate under subsection 54E(6), provide written notice of the assessment to the person. For example, in the context of a criminal intelligence assessment for a MSIC background check, the Department of Home Affairs will be required to provide written notice of an adverse criminal intelligence assessment it receives to the person who is the applicant for, or holder of, the MSIC, unless a certificate has been made under subsection 54D(6) and is in force.

264. The note following subsection 54E(1) highlights that subsections 54E(3), (4) and (5) outline exceptions to the requirement to provide written notice of an adverse criminal assessment to the person who is the subject of the assessment.

Timing and content of notice

265. Subsection 54E(2) provides that the written notice given by the Commonwealth agency to the person who is the subject of an adverse criminal intelligence assessment must meet the following criteria:

- be given to the person within 14 days, starting the day after the assessment is given by the ACIC to the Commonwealth agency, or, if a certificate that was in force in relation to the assessment, and that certificate is subsequently revoked, the date the certificate is revoked

- inform the person that an adverse criminal intelligence assessment has been made about them

- include the statement of grounds for the assessment that was given by the ACIC to the Commonwealth agency consistent with the requirements under subsection 54D(5), excluding any information subject to a certificate under subsection 54D(7), and

- contain information concerning the person's right to apply to the ART for a review of the assessment.

266. Subsection 54E(2) will provide important safeguards to ensure that the subject of an adverse criminal intelligence assessment is given adequate oversight of the reasons why an adverse assessment was made and will enable the applicant's right to seek review.

267. The provision of the written notice to the person will rely upon section 28A of the *Acts Interpretation Act 1901*. This means that the document may be served on a person by delivering it to the person personally; or by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the person serving the document. As referenced by this provision, the *Electronic Transactions Act 1999* deals with giving information in writing by means of an electronic communication.

Exception—firearms

268. Subsection 54E(3) provides an exception to the requirement to provide written notice of an adverse criminal intelligence assessment under subsection 54E(1). This subsection disapplies the requirement to provide written notice of an adverse criminal intelligence assessment given in relation to decision under a law of a state or territory:

- to issue a new firearms licence or take other actions relating to the issue of such a licence, including the imposition of conditions; or
- to renew, revoke, vary or suspend or vary an existing firearms licence.

269. The effect of subsection 54E(3) is that written notice of an adverse criminal intelligence assessment will not be provided to the individual who is the subject of a firearms background check. The outcome of that adverse criminal intelligence assessment will be provided by the ACIC to AusCheck. This would enable AusCheck to then provide advice to the relevant state or territory licensing authority, in accordance with arrangements that would be included in the AusCheck Regulations.

270. The result of subsection 54E(3) is the exclusion of merits review for the individual who is the subject of firearms background check, as an application to the ART under

subsection 54J(1) can only be made by person who has been given a notice under section 54E. Subsection 54J(4) puts beyond doubt that merits review is not available for an individual who is the subject of adverse criminal intelligence assessment for the purposes of firearms background check. The ACIC will, however, continue to be required to afford the subject of an adverse criminal intelligence assessment relating to a firearms background check with procedural fairness in the making of that assessment. The content of that requirement would depend on the circumstances of each case.

271. These amendments would limit the potential disclosure of sensitive criminal intelligence information in the firearms background-check context, and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC.

272. Subsection 54E(4) establishes that an exception to subsection 54E(3) may be prescribed under the ACC Regulations. The effect of subsection 54E(4) is that certain types of firearms background checks may be exempt from the disapplication of notice requirements if specified under the ACC Regulations, and, as a result, require that written notice of an adverse criminal intelligence assessment be provided to the individual who is the subject of that specified type of firearms background check.

Exception—Minister's certificate

273. Subsection 54E(5) provides an exception to the requirement to provide written notice of an adverse criminal assessment under subsection 54E(1) in instances where a certificate has been made by the Minister under subsection 54E(6).

274. Subsection 54E(6) provides that the Minister may certify, in writing, that he or she is satisfied that the withholding of notice to the person of the making of an adverse criminal intelligence assessment in respect of the person is essential to avoid prejudice to law enforcement or intelligence interests or security. ***Law enforcement or intelligence interests*** is defined in section 52 and would, for example, encapsulate protecting interests in relation to ongoing collection of criminal intelligence. Security is defined in section 52 to have the same meaning as in the ASIO Act.

275. Given that the result of subsection 54E(5) is the temporary exclusion of the subject of the assessment's right to seek merits review under section 54J, which could only be for the purpose of protecting and limiting the disclosure of the highly sensitive information, it is appropriate that this power sit at the Ministerial level.

276. For example, this means that when a certificate is issued under subsection 54E(6) in relation to a criminal intelligence assessment for the purposes of an ASIC or MSIC background check, the Department Home Affairs will be unable to provide a written notice of the adverse assessment to the subject.

277. This power would only be used in extraordinary cases where it is essential to the protection of law enforcement or intelligence interests and security. Serious and organised crime poses a formidable threat to Australia, posing a risk of significant economic and social harm, and a risk of the proliferation of illicit activities that undermine the integrity of Australia, its national security, border operations and prosperity. As a result, subsection

54E(6) is an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts. Alerting the applicant may undermine the validity of such interests and could have serious impacts on the safety of the integrity of Australia, its national security, border operations and prosperity.

278. Paragraph 54E(7)(a) will provide that, if a certificate is made by the Minister under subsection 54E(6), the Minister must provide a copy of the certificate to the Commonwealth agency to which the adverse criminal intelligence assessment was given under subsection 54D(3). These documents are required to be in writing, to facilitate accurate record-keeping which is essential for accountability, administrative review and oversight purposes.

279. Paragraph 54E(7)(b) will provide that the Minister will additionally need to consider whether to revoke the certificate within 12 months beginning on the day the certificate is issued, and every subsequent 12 months. This is to ensure active consideration is given to the effects the withholding of notice to the person of the making of an adverse criminal intelligence assessment, including their ability to apply for ART review.

280. Subsection 54E(8) is a statement of law in respect of certificates, which clarifies that a certificate made by the Minister under that subsection is not a legislative instrument and is intended to assist readers. This is because any certificate issued by the Minister under subsection 54E(6) amounts to the application of the law in a particular only in instance to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

Section 54F Effect of preliminary advice by the ACC

281. Section 54F is equivalent to previous section 36E of the ACC Act and will govern how any preliminary advice or other communication provided by the ACIC to the Commonwealth agency about the person who is the subject of a criminal intelligence assessment should be treated by the Commonwealth agency.

282. This section will provide that a Commonwealth agency must not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the ACIC not amounting to a criminal intelligence assessment. The effect of this provision is that any information provided by the ACIC to a Commonwealth agency in relation to a person who is subject to a criminal intelligence assessment, before that assessment has been finalised and formally issued to AusCheck, cannot be relied upon to take prescribed administrative action. For example, if the ACIC were to send an intelligence report containing information relevant to the Department of Home Affairs, then Department of Home Affairs is not authorised to use that report as the basis for prescribed administrative action to be taken.

283. Section 54F provides for the protection of any sensitive information the ACIC holds and may choose to share with a Commonwealth agency for purposes other than a criminal intelligence assessment. For example, if the ACIC had intelligence or information that indicated serious and organised crime entities are exploiting a loophole in the AusCheck system, the ACIC might want to share this sensitive information with AusCheck.

284. A final criminal intelligence assessment will be given by the ACIC to the Commonwealth agency after consideration of whether the CEO should certify under

subsection 54D(7) that disclosing particular information within the statement of grounds for the assessment would prejudice law enforcement interests or security, and should not be provided to the subject of the assessment; and whether the statement of grounds for the assessment should be withheld from the subject by the Minister under subsection 54E(6).

285. This section provides important protections for the potentially sensitive information the ACIC will consider in making a criminal intelligence assessment, protection of which should be given proper consideration prior to being acted upon. In addition, preventing a Commonwealth agency from taking prescribed administrative action on information other than a criminal intelligence assessment will ensure that a person in respect of who the administrative action is taken will be able to access the review mechanisms under Division 4 of Part III in relation to that ACIC information, subject to certain exceptions.

Division 3—Automation of specified criminal intelligence assessment action

286. Division 3 contains provisions relating the use of automation for certain criminal intelligence assessments.

287. The clauses in this Division are based on the Government's response to recommendation 17.1 of the Royal Commission into the Robodebt Scheme Report and the Commonwealth Ombudsman's Automated Decision-making Better Practice Guide. They are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

Section 54G Automation of specified criminal intelligence assessment action

288. Section 54G will provide the overarching legislative basis for the use of a computer program to make decisions in relation to specified criminal intelligence assessment actions under new Part III of the ACC Act.

289. Noting the high volume of criminal intelligence assessments made by the ACIC each year, including the expected increase in the volume of assessments required to inform an AusCheck firearms background check, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision-making (i.e. computer program) in certain circumstances, being where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Where there is no match against those holdings, an automated response of 'no adverse provided' is sent to AusCheck.

290. Section 54G will not enable all non-adverse assessments to be made by use of a computer program, rather, it enables a particular subset of assessments to be made by use of a computer program. Automated decision-making will only be used where it is beneficial to the applicant, for example, where the result is confirming that is it appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

291. For example, if the ACIC is conducting a criminal intelligence assessment for the purposes of an ASIC background check, automated processes in isolation would only be used where there is no adverse result returned and the individual is eligible to receive their ASIC, thus receiving access to the aviation environment (subject to any other

background checking processes). This result is then provided to AusCheck to inform whether someone is eligible for an ASIC.

292. Alternatively, where there is a match, the ACIC will undertake further analysis of the applicant to determine if a non-adverse criminal intelligence assessment, or an adverse criminal intelligence assessment, is appropriate.

293. Subsection 54G(1) will allow for the CEO to arrange for the use of computer programs to take valid specified criminal intelligence assessment action, as defined under subsection 54G(2), on behalf of the ACIC. The use of computer programs to take specified criminal intelligence assessment action will be subject to the ongoing oversight of the CEO.

294. This will support ongoing monitoring of the operation and the validity of computer programs arranged for use. A written record of any future arrangement ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking specified criminal intelligence action.

295. Subsection 54G(2) sets out the actions under Part III that can be taken to be 'specified criminal intelligence assessment action' that a computer program may undertake for the purpose of this Part. This will ensure that the parameters of what is considered as specified criminal intelligence assessment action, being actions that are permitted to be taken by use of a computer program, are clear and transparent.

296. The specified criminal intelligence assessment actions are:

- Performing, or refusing or failing to perform, a function or duty under subsection 54C(6), which will provide that the ACIC must make a criminal intelligence assessment that is not-adverse if the person is not identified in a search of intelligence held by the ACIC that is conducted in accordance with the instructions issued by the CEO;

- Performing, or refusing or failing to perform, a function or duty under subsection 54D(2), which will provide that the ACIC must give a criminal intelligence assessment that is non-adverse to the relevant Commonwealth agency if the person is not identified in a search of intelligence held by the ACIC that is conducted in accordance with the instructions issued by the CEO; or

- Doing, or refusing or failing to do, anything related to performing a function or duty under the subsections mentioned in paragraphs 54G(2)(a) or (b).

297. The definition of specified criminal intelligence assessment action is intended to cover a computer program exercising a power as well as refusing or failing to exercise a power where a computer program has been designed to take such action. Where a decision involves the exercise of discretion or an evaluative judgement (such as where there is a match provided against the ACIC's relevant intelligence holdings, and therefore requires further consideration by a human) this would be classified as the refusal of a computer program to take action. The term 'failure' would include inaction by the computer program, either by design or by fault. Paragraph 54D(2)(c) is intended to extend to the use of computer programs to assist with preliminary procedural or routine aspects leading to the final specified criminal intelligence assessment action.

ACC is treated as having taken specified criminal intelligence assessment action

298. Subsection 54G(3) will provide that specified criminal intelligence action taken by the operation of a computer program under an arrangement made under subsection 54G(1) is treated, for all purposes, as a criminal intelligence assessment made by the ACIC, for which the ACIC will be wholly accountable.

Substituting specified criminal intelligence assessment action

299. Subsection 54G(4) provides an additional safeguard by allowing the ACIC the discretionary power to take specified criminal intelligence assessment action, or make a criminal intelligence assessment, in substitution for specified criminal intelligence assessment action the ACIC is treated as having taken under subsection 54G(3), should the ACIC consider this action to be incorrect or not the preferred action. This clause would ensure that a person can override or substitute the computer program decision when required.

300. This is intended to make it clear that the ACIC is not limited to making a non-adverse criminal intelligence assessment where the operation of the computer is incorrect or not preferable and may also make a criminal intelligence assessment, including an adverse assessment made by a human decision maker in this circumstance if required. For example, a human may make an assessment in substitution for a specified criminal intelligence assessment where the ACIC new intelligence comes to light due to a rapidly evolving situation, in relation to which the ACIC wishes for a human decision maker to consider the assessment. The proposed subsection also recognises the potential for errors to occur in the decision-making process, including through computer errors, coding or system malfunctions. It is important to enable the substitution of specified criminal intelligence assessment action taken with the assistance of a computer program in these situations. This subclause would ensure that the ACIC can override or substitute a decision made through the use of a computer when required.

301. Subsections 54G(5) and (6) specify when a substituted decision will take effect. By default, paragraph 54G(5)(b) specifies that this will be the day that the occurrence of the original specified criminal intelligence assessment action taken by the operation of the computer program. Paragraph 54G(5)(a) however, alternatively allows the ACIC to specify the day on which the substituted decision can take effect, which as per subsection 54G(6) may be earlier than the day the substituted decision is taken. By not providing a time limit for the substitution power to be exercised, errors can be corrected regardless of when they are identified. This subclause also recognises that there may be a delay between a computer-made decision and the day when the substituted decision occurs.

ACC may still take specified criminal intelligence assessment action

302. Subsection 54G(7) specifies that an arrangement under subsection 54G(1) does not prevent the ACIC from taking specified criminal intelligence assessment action. That is, a human would still be able to take specified criminal intelligence assessment action personally, even when there is an arrangement to use a computer program to take specified criminal intelligence assessment action. This is because an arrangement under subsection 54G(1) would not require those actions to be taken by a computer program, but rather would provide an additional method by which criminal intelligence assessment action could be taken.

Arrangement not a legislative instrument

303. Subsection 54G(8) would clarify that an arrangement made under subsection 54G(1) is not a legislative instrument. This is because an arrangement made under subsection 54G(1) would not determine or alter the law but rather would change the method by which a particular decision or administrative action could be taken. Standard transparency and other requirements for legislative instruments would not apply. However, the provisions listed at subsection 54H(1) provide for alternative appropriate safeguards.

Section 54H Oversight and safeguards for automation of specified criminal intelligence assessment action

304. Section 54H will provide oversight measures and safeguards for criminal intelligence assessments involving automation. These measures are in recognition of the Ombudsman's Automated Decision-making Better Practice Guide and are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

305. Subsections 54H(1) and (2) will outline the duties of, and actions that must be taken by, the CEO to have operational oversight of the use of a computer program taking specific criminal intelligence assessment action.

306. Subsection 54H(1) requires that the CEO take all reasonable steps to ensure that specified criminal intelligence assessment action taken by the operation of a computer is specified criminal intelligence assessment action the ACIC could validly take under this Part. This would require the CEO to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis. This is a general oversight obligation which would require the CEO to take reasonable steps at a systemic level, such as ensuring there are effective governance structures and audit and assurance mechanisms in place, to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis.

307. 'Reasonable steps' to ensure that specified criminal intelligence action is action that could be validly taken will depend on the circumstances but could include undertaking regular audits and updates of the computer system to ensure compliance with this Part and ensure system accuracy. Internal quality control systems, audit processes are also likely to be needed by the ACIC. It could also include ensuring that the computer program is designed, used and maintained so that it accurately and consistently reflects the sections of the new Part III of the ACIC Act, or ensuring that any computer program generated decisions or actions are consistent with the objects of Part III.

308. Subsection 54H(2) is an additional safeguard to the above. Specifically, in the event that there are regulations prescribing additional things for the CEO to do to ensure that specified criminal intelligence assessment action taken by the operation of a computer program is action that could be validly taken, the CEO must do the things prescribed in such regulations.

309. The note accompanying this subclause will clarify that specified criminal intelligence assessment action may still be invalid even if proposed subsections (1) and (2) are complied with. The purpose of the note is to convey that additional requirements may be

set out in regulations for oversight and safeguard steps that the CEO needs to follow. These are procedural and do not go to the fundamental validity of the decision.

310. Subsection 54H(3) will clarify that the specified criminal intelligence assessment actions taken by a computer program under an arrangement under proposed subsection 54G(1), are not rendered invalid due to failure to take 'reasonable steps' in accordance with the requirements set out in proposed subsections 54H(1) and (2). A computer program may generate a valid decision even if the person with oversight failed to take reasonable steps to ensure validity of the action taken. Legal validity will depend on whether the computer program took valid and correct action under this Part. The CEO will have a duty to ensure that this is the case, but this duty is distinct from the general administrative law requirements to make valid decisions. Although a failure to take all reasonable steps will not, in itself, invalidate decisions, there is a substantial risk that a failure to take reasonable steps could result in scenarios where decisions produced by the system are not valid. For example, inadequate controls could result in the computer program not being monitored and updated in line with legislative changes. In this situation, the computer program would become outdated and no longer generate correct decisions.

311. Notification requirements that would otherwise support administrative law principles of transparency and accountability (a key focus of the Commonwealth Ombudsman's Automated Decision-making Better Practice Guide) are not appropriate in this context, as automated decision-making in this context would only ever be beneficial to a person. That is, as soon as any results are returned against a person, a human decision maker is involved, noting the information may inform a potential adverse criminal intelligence assessment. Automated decision-making in isolation would only be used where a 'no adverse' criminal intelligence assessment result is provided to AusCheck.

312. Further, notifying individuals of the operation of computer programs could prejudice law enforcement or intelligence interests. For example, this could tip off other individuals to a forthcoming adverse result, potentially prejudicing law enforcement and intelligence interests (i.e. if two people apply at the same time, and one gets notified of specified criminal intelligence assessment, and the other does not, this could tip off the second person to the fact that the ACIC holds intelligence that may suggest that they may commit serious and organised crime).

313. Additionally, publication/annual report provisions such as those contained within similar automated decision-making frameworks (see section 484K of the *Telecommunications Act 1997)* are also not appropriate due to the sensitive nature of criminal intelligence assessments.

Division 4—Review of adverse criminal intelligence assessments

314. Division 4 will outline the review mechanism and processes in place for the review of an adverse criminal intelligence assessment by the ART.

Section 54J Applications to Tribunal

315. Section 54J will provide for the making of applications to the ART for review of adverse criminal intelligence assessments made under section 54C. This clause is equivalent to previous section 36F of the ACC Act.

316. Subsection 54J(1) provides that a person can apply to the ART for a review of the decision of the ACIC to make an adverse criminal intelligence assessment in relation to that person under section 54C.

317. Note 1 following subsection 54J(1) outlines that, under section 18 of the *Administrative Review Tribunal 2024* (ART Act), an application for review by the ART of a decision should generally be made within the period prescribed by rules made under that Act. Nothing in subsection 54J(1) is intended to limit the ART's discretion to extend time in respect of an application for review under section 19 of the ART Act.

318. Note 2 following subsection 54J(1) highlights that subsections 54J(4) and (5) outline an exception to the application for merits review of an adverse criminal assessment.

319. Subsection 54J(2) provides that an application for review of an adverse criminal intelligence assessment must be made by the person who was the subject of the assessment and who has been given notice of the assessment under section 54E.

320. The effect of subjection 54J(2) is that the only entity who can apply for ART review of an adverse criminal intelligence assessment is the person who is the subject of the background check, and only after that person has received notice of the assessment from a Commonwealth agency under subsection 54E(1).

321. In relation to people to who subsection 54E(5) applies because the Minister has certified that the withholding of notice under subclause 54E(6) is essential to the protection of law enforcement interests and/or security , they will not be able to apply to the ART for review of the adverse criminal intelligence assessment unless and until the Minister has made a decision pursuant to paragraph 54E(4)(b) to revoke the subsection 54E(6) certificate. That is because, unless and until the certificate is revoked, the person will not have been given notice of the assessment under section 54E, such that subsection 54J(2) will not be capable of being satisfied. This preserves the subject of an assessment's right to seek review because notice of the decision will not have been given until the certificate has been lifted such that the period for seeking review of the decision will not have commenced.

322. The temporary exclusion of the subject of an assessment's right to seek merits review is necessitated to protect and limit the disclosure of the highly sensitive information that led the Minister to issue the certificate under subsection 54E(6).

Interaction with the ART Act

323. Subsection 54J(3) will specify that subsection 54J(2) has effect despite subsection 17(1) of the ART Act, which provides that any person whose interests are affected by a decision may apply for ART review of the decision. This accords with the position in relation to the review of security assessments under section 54 of the ASIO Act.

Exception

324. Subsection 54J(4) provides an exception to the application of merits review to a decision to make an adverse criminal assessment under subsection 54J(1). This subsection disapplies merits review to a decision to make an adverse criminal assessment in relation to decision under a law of a state or territory:

- to issue a new firearms licence or take other actions relating to the issue of such a licence, including the imposition of conditions; or

- to renew, revoke, vary or suspend or vary an existing firearms licence.

325. The effect of subsection 54J(4) is that an individual who is the subject of a firearms background check may not apply to the ART for merits review of a decision to make an adverse criminal assessment. This recognises that ACIC's criminal intelligence assessments are only one input into firearm licensing decision and it would be anomalous for these assessments to be subject to merits review when some states and territories may not permit review of the final firearms licensing decision.

326. The individual who is the subject of a firearms background check will retain the right to seek judicial review of adverse criminal intelligence assessments. These individuals may also retain the right to seek merits review of final firearms licensing decisions at the state and territory level, subject to the laws of each jurisdiction.

327. Subsection 54J(5) establishes that an exception to subsection 54J(4) may be prescribed under the ACC Regulations. The effect of subsection 54J(4) is that certain types of firearms background checks may be exempt from the disapplication of merits review if specified under the ACC Regulations. The result of which would be that subject of that specified type of firearms background check would be able to apply to the ART for merits review of the decision to make an adverse criminal assessment against them.

Section 54K Restrictions on further assessments after review

328. Section 54K will restrict the ACIC from making another criminal intelligence assessment in respect of a person, where the ART has made findings upon the review of an adverse criminal intelligence assessment in respect of that person, and the further criminal intelligence assessment is not in accordance with those findings. This section is equivalent to section 36P of the ACC Act.

329. Exceptions to this general obligation apply where either matters occurring after the review provide a basis for conducting a further assessment, or new evidence is available that was not available in the course of the ART review.

330. Section 54K is an important safeguard because it prevents the ACIC from issuing a new criminal intelligence assessment that contradicts findings made by the ART after a review. This ensures the integrity and finality of the review process, protecting individuals from repeated or inconsistent assessments that could undermine procedural fairness. The clause also provides flexibility by permitting further assessments only when new evidence emerges or circumstances change after the review, balancing fairness with the need to respond to evolving risks of serious and organised crime.

Section 54L Costs

331. Section 54L will enable the ART to make orders that an applicant's costs be paid by the Commonwealth. This clause is equivalent to section 36R of the ACC Act.

332. The Tribunal is by default a no-costs jurisdiction, meaning each party bears their own legal costs. Subsection 54L(1) overrides this default position and will enable the ART to

order that the costs reasonably incurred by the applicant in connection with their application under section 54J, or a part of such costs, be paid by the Commonwealth where:

- a person makes an application for a review of an adverse criminal intelligence assessment under section 54J,
- the applicant was, in the opinion of the ART, successful, or substantially successful, in the application for review, and
- the ART is satisfied that it is appropriate to order the payment of costs by the Commonwealth in all the circumstances of the case.

333. Section 54L is an important safeguard because it allows the ART to order that an applicant's legal costs be paid by the Commonwealth when they are successful, or substantially successful, in challenging an adverse criminal intelligence assessment. This provision promotes fairness and access to justice by reducing the financial burden on individuals seeking review of decisions that can significantly impact their ability to work in secure environments. It also promotes the right to effective remedy by ensuring that applicants are not deterred from exercising their review rights due to cost concerns.

Interaction with ART Act

334. Subsection 54L(2) is an avoidance of doubt clause, which will specify that, for the purposes of section 115 of the ART Act about taxing costs, the Commonwealth will be taken to be a party to the proceedings referred to in subsection 54L(1).

Division 5—Secrecy

Section 54M Secrecy—criminal intelligence assessment information

335. Section 54M provides a secrecy provision to prevent any inappropriate disclosure of information contained in or relating to a criminal intelligence assessment. This section is equivalent to section 36Q in the ACC Act.

336. Subsection 54M(1) provides that a person commits an offence if:

- the person is, or has been, either a member or officer of the ART or an officer or employee of the Commonwealth agency to which an adverse criminal intelligence assessment has been given under subsection 54D(3);
- the person described in paragraph 54M(1)(a) makes a record of, discloses or otherwise uses information;
- the information was obtained by the person by reason of, or in the course of, the person's functions, duties or powers as a member or officer of the ART or an officer or employee of the Commonwealth agency; and
- the information that is recorded, disclosed or otherwise used is, is contained in, or relates to, a criminal intelligence assessment.

337. Paragraph 54M(1)(c) is intended to capture circumstances where a person obtains information in the course of the person's employment as well as where the person inappropriately accesses that information.

338. Paragraph 54M(1)(d) is intended to capture all information contained in a criminal intelligence assessment, including information subject to a CEO certificate under subsection 54D(7), as well as all information used by the ACIC to conduct the assessment and prepared by the ART in reviewing an assessment.

339. The maximum penalty that may be imposed for an offence against subsection 54M(1) is two years' imprisonment, or 120 penalty units, or both. This significant penalty reflects the potentially serious outcomes from the disclosure of the information contained in, or otherwise relating to, a criminal intelligence assessment.

340. Subsection 54M(2) provides exceptions to the offence in subsection 54M(1), which apply where the making of the record, disclosure or use of information contained in, or relating to, a criminal intelligence assessment.

341. Paragraph 54M(2)(a) provides an exception for the purposes of Part III of the ACC Act, meaning that the making of the record, or disclosure or use of information is for the purpose of making and giving a criminal intelligence assessment under Divisions 2 and 3 or for the purpose of conducting a review of an adverse assessment in the ART under Division 4.

342. Paragraph 54M(2)(b) provides an exception for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers as a member or an officer of the Tribunal, or as an officer or employee of the agency. This means, for example, that officers in Department of Home Affairs are able to disclose the fact that an adverse assessment has been made, in accordance with subsection 54E(1), or make records about the person who has applied for review of their adverse criminal intelligence assessment, including in preparation for giving submissions and adducing evidence for proceedings in the ART.

343. Note 1 following subsection 54M(2) outlines that, under subsection 13.3(3) of the Criminal Code, a defendant who wishes to rely upon an exception provided by the law creating the offence (such as this section of the ACC Act) bears an evidential burden in relation to the matter. This means that a defendant to an offence under subsection 54M(1) is required to meet an evidential burden that either paragraph 5M(2)(a) or (b) applies.

344. Note 2 following subsection 54M (2) indicates that section 276 of the ART Act, which relates to the application of confidentiality provisions in other Acts and instruments, also applies in relation to the disclosure of certain information and documents by members and officers of the ART.

345. Note 3 following subsection 54M outlines that section 51 of the ACC Act deals with secrecy requirements for the CEO, members of the Board, staff members, and ACIC Examiners, which is why those officials are not captured by this provision.

Item 25 Section 59A

346. This item amends section 59A to omit 'subsection 36B(2)' and substitute 'subsection 54C(2) or 54D(3)'. This will clarify that proposed subsections 54C(2) or 54D(3) are excluded from the CEO's power to delegate a power, function or duty of the CEO. The provision ensures that the power to make a legislative instrument so as to determine matters relevant the making of a criminal intelligence assessment (subsection 54C(2)) or

furnish an adverse criminal intelligence assessment to Commonwealth agencies (subsection 54D(3)), cannot be delegated. These powers must be exercised personally by the CEO.

Australian Security Intelligence Organisation Act 1979

Item 26 Section 4

347. This item inserts new definition specified assessment action, which has the meaning given by section 92E of the Act, and refers to specified action which may be undertaken by use of a computer program.

Item 27 Subsection 35(1) (subparagraph (h)(ii) of the definition of *prescribed administrative action*)

348. This item omits the reference to 'a decision about whether to revoke', and substitutes 'a decision about whether to renew, revoke, vary or suspend'. This would clarify the definition of prescribed administrative action to include a decision about whether to renew, revoke, vary or suspend a firearms licence. This amendment supports ASIO in furnishing a security assessment to AusCheck to facilitate a firearms background check by enabling the assessment to include a recommendation, opinion or advice on whether it would be consistent with the requirements of security for such action to be taken or whether the requirements of security make it necessary or desirable for such an action to be taken.

Item 28 At the end of subsection 36(1)

349. This item inserts a new paragraph (d) at the end of subsection 36(1) of the ASIO Act, which will provide that Part IV of the ASIO Act, other than sections 35, 41 and 42 and subsections 37(1), (3) and (4), does not apply to an adverse security assessment provided in relation to a decision under a law of a state or territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions), and a decision about whether to renew, revoke, vary or suspend a firearms licence (as referred to in paragraph 35(1)(h) of the definition of prescribed administrative action, as amended by the Bill).

350. The purpose of this amendment is to disapply the notification requirements and merits review rights provided under Part IV of the ASIO Act for an adverse or qualified security assessment provided by ASIO to inform a decision in relation to a firearms licence, including an adverse or qualified assessment provided to AusCheck in facilitating a firearms background check. This means that a firearms licence holder or applicant will not receive notice of the assessment, nor will they have the ability to apply to the ART for review of the assessment. This amendment would limit the potential disclosure of sensitive intelligence information in the firearms background-check context, and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. ASIO will, however, continue to be required to afford the subject of an adverse or qualified security assessment relating to a firearms background check with procedural fairness, subject to the requirements of security. The content of that requirement would depend on the circumstances of each case.

351. The amendment would avoid any incongruous outcome where a security assessment may be subject to merits review in circumstances where a state or territory law does not provide for merits review of the ultimate decision to revoke or not issue a firearms licence. Of note, the *Terrorism and Other Legislation Amendment Act 2025* (NSW) has removed the right to merits review by the NSW Civil and Administrative Tribunal (NCAT) for decisions made on firearms licence applications made in NSW, in order to ensure sensitive police intelligence can inform decisions without being subject to scrutiny by the NCAT. In such cases, it is appropriate for the adverse or qualified security assessment furnished by ASIO to AusCheck as part of a firearms background check to also not be subject to merits review. Firearms licence applicants would retain the right to seek judicial review of an adverse or qualified security assessment.

Item 29 After subsection 36(2)

352. This item inserts new subsection (2A) in section 36 to clarify that new paragraph (1)(d) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection. This will enable the making of regulations for the purpose of prescribing circumstances that are excluded from the disapplication of notice requirements and review mechanisms for any adverse or qualified security assessments furnished by ASIO in relation to a decision under a law of a state or territory to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions), and a decision about whether to renew, revoke, vary or suspend a firearms licence. The intent of this provision is to provide a flexible mechanism to re-enliven notification requirements and merits review rights for specific circumstances relating to an adverse or qualified security assessment provided in relation to a firearms licensing decision, as required. Allowing for the circumstances to be prescribed in regulations will also maintain transparency with regard to the circumstances that may be prescribed.

Item 30 Before section 93A

353. This item inserts new sections 92E and 92F into the ASIO Act.

354. Noting the volume of security assessments is expected to significantly increase to support the AusCheck firearms background checks framework, automating the decision-making for specified assessment action (for example, assessments under Parts IV and Part IVA of the ASIO Act) will help to create efficiencies for ASIO in appropriate circumstances. It will not enable all decisions to be made by way of a computer program, but rather, enables specified decisions to be made by way of a computer program.

<u>Section 92E Automation of specified assessment action</u>

355. New section 92E provides for the automation of specified assessment action. The purpose of the section is to provide legislative authority for the Director-General to arrange for ASIO to use automated decision-making for specified assessment action, such as specified classes of actions under Parts IV and IVA of the ASIO Act.

356. Noting the high volume of assessments made by ASIO each year, including the expected increase in the volume of assessments required to inform an AusCheck firearms background check, it is necessary for ASIO to make and give certain assessments by way of automated decision-making (i.e. computer program) in certain circumstances.

357. Section 92E will not enable all assessments to be made by use of a computer program. Rather, it enables a particular subset of specified assessment action approved by the Minister in an instrument made under section 92F to be made by use of a computer program.

358. Subsection 92E(1) would allow the Director-General to arrange, in writing, for the use, under the oversight of the Director-General, of computer programs to take specified assessment action, as defined under subsection 92E(2). This subsection would provide the overarching legislative basis for the use of a computer program to take certain actions under Parts IV and IVA of the ASIO Act. The use of computer programs to take specified assessment action will be subject to the ongoing oversight of the Inspector General of Intelligence and Security (IGIS).

359. This framework will support ongoing monitoring of the operation and the validity of computer programs that are used. A written record of any arrangement made by the Director-General ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking specified assessment action.

360. Subsection 92E(2) provides that the Director-General must consult the IGIS before after making an arrangement under subsection 92E(1). This will ensure that the Director-General has, the benefit of the Inspector General's views, informed by the Inspector-General's oversight of the legality, propriety and consistency with human rights of ASIO's conduct, when determine how ASIO should use automated decision-making for the purposes of specified assessment actions.

361. Subsection 92E(2) will require the Director-General to give a copy of the arrangement to the IGIS as soon as practicable after making an arrangement under subsection 92E(1). This will ensure initial scrutiny over ASIO's use of automated decision-making and will further support the IGIS' review of ASIO's compliance with the arrangements, in the course of its ongoing oversight of ASIO's activities.

362. Subsection 92E(4) provides that specified assessment action has the meaning given by an instrument made by the Minister under new section 92F. The instrument provides a mechanism for the Minister to specify the types of actions under Parts IV and IVA of the ASIO Act which are permitted to be taken by use of a computer program under an arrangement made by the Director-General under subsection 92E(1). This provision ensures that ASIO's use of automated decision-making is subject to Ministerial oversight and control, requiring Ministerial approval of the subset of actions that may be taken through use of computer programs.

Organisation treated as having taken specified assessment action

363. Subsection 92E(5) will provide that specified assessment action taken by the operation of a computer program under an arrangement made under subsection 92E(1) is treated, for all purposes, as action taken by the ASIO, for which ASIO will be wholly accountable.

Substituting specified assessment action

364. Subsection 92E(6) provides a safeguard by allowing ASIO the discretionary power to substitute a specified assessment action for specified assessment action taken by use of a

computer program that ASIO is treated as having taken under subsection 92E(5), should ASIO consider the action taken by use of a computer program to be the incorrect or not preferred action. This amendment would ensure that a natural person can override or substitute a decision made by operation of a computer program, when required, so that all specified assessment action taken is the correct and preferred action. For example, a human may make an assessment in substitution for a specified assessment action where new intelligence comes to light due to a rapidly evolving situation which may require ASIO to substitute a non-prejudicial assessment taken by operation of a computer program with a prejudicial assessment made by a human. By not providing a time limit for the substitution power to be exercised, errors can be corrected by ASIO regardless of when they are identified.

365. Subsection 92E(6) also recognises the potential for errors to occur in an automated decision-making process, including through computer errors, coding or system malfunctions. It is important to enable the substitution of specified assessment action taken by use of a computer program in such circumstances.

366. Subsections 92E(7) and 92E(8) specify when a substituted decision will take effect. Paragraph 92E(7)(a) allows ASIO to specify the day on which the substituted decision can take effect, which as per subsection 92E(8) may be earlier than the day the substituted action is taken, but not earlier than the day of the specified assessment action taken by the operation of the computer program.

367. If no day has been specified by ASIO for the substituted decision to take effect, then paragraph 92E(7)(b) provides that the substituted decision takes effect on the day of the specified assessment action taken by the operation of the computer program. These provisions recognise that there may be a delay between a computer-made decision and the day when the substituted decision occurs.

Organisation may still take specified assessment action

368. Subsection 92E(9) specifies that an arrangement under subsection 92E(1) to use a computer program to take specified assessment action does not limit an ASIO officer from taking the same action, as appropriate. Rather, it provides an additional method by which those actions could be taken. For example, an arrangement under subsection 92E(1) could specify that a computer program determine a non-prejudicial outcome for an assessment in certain circumstances. This would not prevent an ASIO employee from reaching the same conclusion and taking the same action, or using the information to instead take a different action if, based on their analysis, they consider that to be the more appropriate outcome.

Reference to Organisation

369. Subsection 92E(10) clarifies that a reference to ‘the Organisation’ in section 92E includes a reference to the Director-General exercising powers or performing functions on behalf of the Organisation.

Arrangement not a legislative instrument

370. Subsection 92E(11) would clarify that an arrangement made under subsection 92E(1) is not a legislative instrument. This is because an arrangement made under subsection

92E(1) would not determine or alter the law but rather would change the method by which a particular action could be taken.

Section 92F Instrument defining specified assessment action

371. Subsection 92F(1) provides that the Minister may make an instrument for the purposes of subsection 92E(4), specifying what types of actions under Parts IV and IVA of the ASIO Act are permitted to be taken by use of a computer program, being specified assessment action.

372. The note following subsection 92F(1) clarifies a reference to 'making' an instrument should be read as including 'varying or revoking' an instrument as per subsection 33(3) of the *Acts Interpretation Act 1901*. The application of subsection 33(3) applies equally to subsections 92F(1)–(4).

373. Subsection 92F(2) will require that before making an instrument under subsection 92F(1), the Minister must consult the IGIS. This will ensure that the Minister has the benefit of the Inspector General's views, informed by the Inspector-General's oversight of the legality, propriety and consistency with human rights of ASIO's conduct, when determining whether to authorise ASIO to use automated decision-making for a specified purpose.

374. Subsection 92F(3) will require that as soon as practicable after making an instrument under subsection 92F(1), the Minister must notify the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and give a copy of the instrument to the IGIS. Subsection 92F(4) will then permit the PJCIS may request a briefing on the instrument. In combination, these provisions will ensure there is parliamentary scrutiny in respect of the specified assessment actions that the Minister has set out in the instrument.

375. Subsection 92F(5) would clarify that an instrument made under subsection 92F(1) is not a legislative instrument and will be exempt from the *Legislation Act 2003*. As a result, this instrument will not be publicly available. This differs from the standard approach to automated decision-making provisions which will specify the actions for which automated decision-making may be used in primary legislation. However, this differential treatment or an instrument made under subsection 92F(1) is necessary to achieve the legitimate objective of protecting Australia's national security by protecting sensitive information.

376. An instrument defining the types of actions a computer program takes may contain information that goes to sensitive aspects of ASIO's methodologies and capabilities. Compromise of this information could adversely impact Australia's national security by undermining the quality and effectiveness of ASIO's assessments. As a result, the differential treatment is necessary to achieve the legitimate objective of protecting Australia's national security by protecting sensitive information.

377. Adherence to established administrative law principles will also be ensured by requiring that the content of an instrument made under subsection 92F(1) is subject to independent scrutiny by the PJCIS and the IGIS, as provided for under subsections 92F(3)–(4), and the range of oversight and safeguards under section 92G.

Section 92G Oversight and safeguards for automation of specified assessment action

378. Section 92G provides for oversight measures and safeguards on the use of automated decision-making for specified assessment action (for example, assessments under Parts IV and Part IVA of the ASIO Act). These measures are in recognition of the Ombudsman's Automated Decision-making Better Practice Guide and are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

379. Subsections 92G(1) and 92G(2) will outline the duties of, and actions that must be taken by the Director-General in oversighting the use of a computer program taking specified assessment action.

Director General to ensure specified assessment action is action that could be validly taken

380. Subsection 92G(1) provides that the Director-General must take all reasonable steps to ensure that specified assessment action taken by the operation of a computer program under an arrangement under subsection 92E(1) is specified assessment action that ASIO can validly take under the ASIO Act. This is a general oversight obligation which would require the Director-General to take reasonable steps at a systemic level, such as ensuring there are effective governance structures and audit and assurance mechanisms in place, to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis.

381. 'Reasonable steps' to ensure that specified assessment action is action that could be validly taken will depend on the circumstances but could include undertaking regular audits and updates of the computer system to ensure compliance with the ASIO Act and ensure system accuracy. This could also be complemented by internal quality control systems and audit processes. Safeguards could also include ensuring that the computer program is designed, used and maintained so that it accurately and consistently reflects the scope of relevant actions under Parts IV and IVA of the ASIO Act, or ensuring that any computer program generated decisions or actions are consistent with the objects of Parts IV and IVA the ASIO Act.

382. Subsection 92G(2) provides an additional safeguard on subsection 92G(1). Specifically, in the event that there are regulations prescribing additional things for the Director-General to do to ensure that specified assessment action taken by the operation of a computer program is action that could be validly taken, the Director-General must do the things prescribed in the regulations.

383. An accompanying note under subsection 92G(2) clarifies that specified assessment action may still be invalid, even if proposed subsections 92G(1) and 92G(2) are complied with. The purpose of the note is to convey that additional requirements may be set out in regulations for oversight and safeguard steps that the Director-General needs to follow; however, these are procedural and do not go to the fundamental validity of the decision.

384. Subsection 92G(3) provides that a failure to comply with proposed subsections 92G(1) and 92G(2) does not affect the validity of the specified assessment action taken by the operation of a computer program under an arrangement under subsection 92E(1), in that the specified assessment action will not be rendered invalid. A computer program may generate a valid decision, even if the person with oversight failed to take reasonable steps to ensure validity of the action taken. Legal validity will depend on whether the computer program took valid and correct action under the ASIO Act.

385. The Director-General will have a duty to ensure that this is the case, but this duty is distinct from the general administrative law requirements to make valid decisions. Although a failure to take all reasonable steps will not, in itself, invalidate decisions, there is a substantial risk that a failure to take reasonable steps could result in scenarios where decisions produced by the system are not valid. For example, inadequate controls could result in the computer program not being monitored and updated in line with legislative changes. In this situation, the computer program would become outdated and no longer generate correct decisions.

Reference to Organisation

386. Subsection 92G(4) clarifies that a reference to 'the Organisation' in section 92G includes a reference to the Director-General exercising powers or performing functions on behalf of the Organisation

Item 31 Applications and savings provisions

Australian Crime Commission 2002

387. This item is an application provision clarifying that Division 2A of Part III to the Act, as in force immediately before the commencement of this item, continues to apply on and after the commencement of the item, in relation to a criminal intelligence assessment that was completed before the commencement of this item.

Australian Security Intelligence Organisation Act 1979

388. This item is an application provision clarifying that the amendment of subsection 36(1) of the Act made by the Schedule applies in relation to a security assessment provided in relation to a decision under a law of a state or territory about whether to issue a firearms licence or otherwise relating to the issue of such a licence (including in relation to conditions), or whether to revoke the firearms licence, on or after the commencement of this item.

Division 3—Spent etc. convictions

Crimes Act 1914

Item 32 Subsection 85ZP(3) (note)

389. This item would repeal and replace the note after subsection 85ZP(3). The new note would provide that there are exceptions to subsection 85ZP(3) in sections 85ZZJC (use and disclosure of spent conviction etc. information by ASIO, ACC and other intelligence or security agencies) and 85ZZL (criminal proceedings before the Federal Court of Australia). This would clarify there would be two exceptions to subsection 85ZP(3), with the insertion of new section 85ZZJC.

Item 33 After section 85ZZJ

390. This item would insert new Subdivision BA – Exclusions relating to ASIO and ACC (Divisions 2 and 3) into Division 6 of Part VIIC of the Crimes Act. The new subdivision would include amended section 85ZZJA and new section 85ZZJB.

391. Part VIIC of the Crimes Act sets out the Commonwealth scheme in relation to pardons, quashed convictions and spent convictions. Division 2 of Part VIIC provides that a person is not required to disclose a pardoned or quashed conviction in the specified circumstances. Division 3 of Part VIIC provides that a person is not required to disclose a spent conviction in the specified circumstances. There are a number of existing exclusions, set out in Division 6 of Part VIIC, which enable or require the disclosure of pardoned, quashed and spent conviction information in certain circumstances.

392. New subdivision BA would address gaps in the current exclusion provisions for ASIO and the ACIC. These amendments would support ASIO and the ACIC in their role in background checking for firearms licenses.

Item 34 Section 85ZZJA (heading)

393. This item would amend the heading for section 85ZZJA to reflect the amended scope of the section.

Item 35 Subsection 85ZZJA(1)

394. This item would amend subsection 85ZZJA(1) by omitting 'Division 3 does' and substituting with 'Divisions 2 and 3 do'.

395. Currently, section 85ZZJA provides that Division 3 in relation to spent convictions information does not apply to the disclosure, filing and recording, or use by ASIO or an ASIO officer, of spent conviction information for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer. This ensures ASIO can take spent convictions into account for the purpose of performing its functions.

396. The amendment to subsection 85ZZJA(1) would provide that Division 2 also does not apply to the disclosure, filing and recording, or use by ASIO or an ASIO officer, of pardoned or quashed conviction information for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer. This would ensure ASIO can take quashed and pardoned convictions into account when performing its functions. In addition to spent conviction information, pardoned and quashed conviction information could be extremely pertinent for the performance of ASIO's functions, which are set out in section 17 of the ASIO Act. For example, where a person's conviction for a terrorism offence is quashed because of legal or procedural error, rather than fresh evidence, the nature of the person's conduct may remain relevant for intelligence purposes.

397. One of ASIO's functions is to advise authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities (paragraph 17(1)(c) of the ASIO Act). This includes the furnishing of security assessments to Commonwealth agencies (subsection 37(1) of the ASIO Act).

398. It is intended that such a security assessment would form part of the new firearms licensing background checks to be conducted by AusCheck. Information in relation to a person's spent, pardoned or quashed convictions could be highly relevant to the assessment and the background check. For example, the nature of the underlying conduct constituting a dangerous weapons offence may still be highly relevant for the purpose of conducting a security intelligence assessment to support a firearms licence background check where a conviction:

- is spent only because of the passage of time, because the person was sentenced to imprisonment for an offence for less than 30 months and the waiting period for the offence has ended, or
- was quashed because of procedural error, rather than new evidence indicating innocence.

Item 36 Before Subdivision C of Division 6 of Part VIIC

399. This item would insert new section 85ZZJB into new subdivision BA of Division 6 of Part VIIC. This item would also insert new Subdivision BB into Division 6 of Part VIIC of the Crimes Act. New subdivision BB would include new section 85ZZJC.

Section 85ZZJB Exclusions—ACC

400. New section 85ZZJB would provide an exclusion from Divisions 2 (pardoned and quashed convictions) and 3 (spent convictions) of Part VIIC for the purpose of the performance of the ACIC's function in paragraph 7A(da) of the ACC Act, which relates to criminal intelligence assessments.

401. Existing section 85ZZJ provides that Division 3 does not apply in relation to:

- the disclosure of information by a law enforcement agency, or an employee or member of a law enforcement agency, to another law enforcement agency, or an employee of or member of another law enforcement agency, where the disclosure is made in the discharge of the duties of the first-mentioned agency, employee or member; or

- filing or recording information that comes into the possession of a law enforcement agency, or an employee or member of a law enforcement agency, where the filing or recording is done in the discharge of the duties of the agency, employee or member; or

- the use by a law enforcement agency of information relating to the investigation or prevention of crime, where the investigation or prevention of crime is a function of the agency.

402. The ACIC is covered by this existing exclusion because of the definition of law enforcement agency in section 85ZL of the Crimes Act. However, this exclusion provision does not capture the use, filing or recording, or disclosure of information for the specific purpose of the ACIC performing its criminal intelligence assessment function. New subsection 85ZZJB(1) would ensure the ACIC can take spent, pardoned and quashed convictions into account when performing this specific function.

403. New subsection 85ZZJB(1) would provide that Divisions 2 and 3 do not apply in relation to:

- the disclosure of information to or by the ACC, or an ACC officer, if the disclosure is made for the purposes of the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*; or

- filing or recording information that comes into the possession of the ACC, or an ACC officer, if the filing or recording is done for the purposes of the performance of the

ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*; or

- the use by the ACC, or an ACC officer, of information for the purposes of the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*.

404. The function covered by 7A(da) of the ACC Act, to be inserted by item 21 of Part 2 of Schedule 2 to this Bill, would be to make and give criminal intelligence assessments, as defined in and in accordance with Part III of the ACC Act.

405. Spent, pardoned and quashed conviction information could be highly pertinent to a criminal intelligence assessment. For example, the nature of the underlying conduct constituting an offence against Division 390 – Criminal associations and organisations may be highly relevant for the purpose of conducting a criminal intelligence assessment, including to support a firearms licence background check, even where a conviction:

- is spent only because of the passage of time, because the person was sentenced to imprisonment for an offence for less than 30 months and the waiting period for the offence has ended, or

- was quashed, for example because of procedural error, rather than fresh evidence indicating innocence.

406. Note 1 after new subsection 85ZZJB(1) would provide that the ACC's function covered by 7A(da) of the Australian Crime Commission Act 2002 relates to criminal intelligence assessments, as a reference for the reader.

407. Note 2 after new subsection 85ZZJB(1) would provide that the ACC is also covered by section 85ZZJ because of the definition of law enforcement agency in section 85ZL, as a reference for the reader.

408. New subsection 85ZZJB(2) would insert a definition of ACC officer for the purposes of new section 85ZZJB to mean:

- a member of staff of the ACC, or

- the Chief Executive Officer of the ACC.

409. The term 'ACC officer' is used to simplify the language of the Crimes Act and make clear that the CEO of the ACIC and a member of staff of the ACIC can disclose, file or record, or use spent, pardoned and quashed conviction information. The term member of staff of the ACC is defined in section 3 of the Crimes Act.

Subdivision BB – Use and disclose of spent etc. conviction information by ASIO, ACC and other intelligence and security agencies

410. New subdivision BB would insert new section 85ZZJC, which is intended to ensure that the use and disclosure of spent, pardoned and quashed conviction information by particular agencies for particular purposes is permitted, despite any state or territory law to the contrary.

411. Subsection 85ZP(3) in Division 1 of Part VIIC of the Crimes Act provides that nothing in Part VIIC authorises a person or body to disclose or take into account a conviction of an offence if to do so would contravene any Commonwealth law, state law, territory law or foreign law. While the exclusion provisions, for example amended section 85ZZJA and new section 85ZZJB, are expressed as exceptions to Divisions 2 and 3 of Part VIIC, they are not expressed as exceptions to Division 1 of Part VIIC. As such, the starting point is that agencies must comply with state and territory spent, pardoned and quashed conviction laws, to the extent that they apply to those agencies.

412. New subdivision 85ZZJC would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by particular agencies for specified purposes, despite any restrictions in state or territory legislation. This would displace the operation of subsection 85ZP(3) and complement the provisions excluding the application of Divisions 2 and 3 of Part VIIC. It is intended the amendments expressly give rise to an inconsistency between the Commonwealth law and state and territory laws, such that the Commonwealth law would prevail to the extent of the inconsistency.

413. To achieve this, new section 85ZZJC would provide express authorisation for particular agencies to use or disclose spent, pardoned and quashed conviction information for specified purposes, and provide that such authorisation has effect despite any law of a state or territory. This would ensure that a relevant agency would not breach any limitation or prohibition under state or territory law on the use or disclosure of relevant information, where that use or disclosure is authorised by new section 85ZZJC.

Section 85ZZJC Use and disclosure of spent etc. conviction information by ASIO, ACC and other intelligence or security agencies

Spent, pardoned and quashed convictions

414. New subsection 85ZZJC(1) would authorise ASIO or an ASIO officer to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, in the performance of the functions, or the exercise of powers, of ASIO or the officer. It is intended this would allow ASIO or an ASIO officer to take such information into account in the performance of ASIO's functions or exercise of its powers. For example, ASIO may 'use' spent, pardoned or quashed conviction information by taking it into account in conducting a security intelligence assessment.

415. New subsection 85ZZJC(2) would permit the ACC or an ACC officer to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, in the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*. It is intended this would allow the ACIC or an ACIC officer to use or disclose such information – for example, by taking it into account, when conducting a criminal intelligence assessment.

416. The Note after new subsection 85ZZJC(2), provides that the ACC's function covered by paragraph 7A(da) of the ACC Act relates to criminal intelligence assessments, as a reference for the reader.

417. New subsection 85ZZJC(3) would permit an intelligence or security agency to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, for the purpose of assessing prospective employees or members of the

agency, or persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency.

418. ***Intelligence or security agency*** is defined in section 85ZL of the Crimes Act to mean:

- ASIO
- the Australian Secret Intelligence Service
- the Australian Signals Directorate
- the Office of National Intelligence
- that part of the Defence Department known as the Defence Intelligence Organisation
- that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation.

419. It is intended that the terms 'prospective employees or members' and 'persons proposed to be engaged as consultants to, or to perform services for' be construed by their ordinary meaning. For example, the provision is intended to enable the use or disclosure of the information when an intelligence or security agency is assessing contractors and other forms of labour hire arrangements. It is not intended that this provision would limit how an intelligence or security agency obtains the information relating to a person's conviction.

420. Information about a spent, pardoned or quashed conviction could be highly pertinent in assessing a person's suitability to work at an intelligence or security agency, noting the nature of their work and the information they handle. For example, where a person was convicted of a serious dishonesty or fraud offence and that conviction is spent because the person was sentenced to imprisonment for less than 30 months and the waiting period has passed, the fact of that spent conviction may remain relevant when considering whether the person should be employed or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

Persons being found guilty of offences but discharged without conviction

421. New subsections 85ZZJC(4)-(6) would permit ASIO, the ACIC and intelligence or security agencies to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction for particular purposes.

422. Subsection 85ZR(2) of the Crimes Act provides that if a state law deems a person never to have been convicted of an offence in particular circumstances for a particular purpose, a Commonwealth authority shall also treat the person never to have been convicted of the offence for a corresponding purpose. Subparagraph 85ZS(1)(d)(ii) prohibits the consideration of the fact that a person has been charged with or convicted of an offence captured by section 85ZR. Taken together, this means the fact that a person has been found guilty of an offence but discharged without conviction cannot be taken into account or disclosed.

423. An example of where this is enlivened is subsection 184(2) of the *Youth Justice Act 1992* (Qld), which provides that a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose. In *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* (2023) 276 CLR 136, the majority held that subsection 184(2) of the *Youth Justice Act 1992* (Qld) was a state law that engaged subsection 85ZR(2) of the Crimes Act, because it deemed a person to have never been convicted of an offence. As such, this information cannot be disclosed or taken into account, because of the operation of paragraph 85ZS(1)(d).

424. New subsections 85ZZJC(4)-(6) would expressly authorise ASIO, the ACIC and intelligence or security agencies to use and disclose such information in for particular purposes, to reflect the relevance of this information.

425. New subsection 85ZZJC(4) would permit ASIO or an ASIO officer to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of the functions, or the exercise of the powers, of ASIO or the officer.

426. New subsection 85ZZJC(5) would permit the ACC or an ACC officer to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of the ACC's function covered by paragraph 7A(da) of the ACC Act. Paragraph 7A(da) of the ACC Act would relate to criminal intelligence assessments.

427. New subsection 85ZZJC(6) would permit an intelligence or security agency to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency. It is not intended that this provision would limit how an intelligence or security agency obtains the information relating to a person's conviction.

428. It is intended that the terms 'prospective employees or members' and 'persons proposed to be engaged as consultants to, or to perform services for' be construed by their ordinary meaning. For example, the provision is intended to enable the use or disclosure of the information when an intelligence or security agency is assessing contractors and other forms of labour hire arrangements.

Relationship with other laws

429. New subsection 85ZZJC(7) would provide that nothing in new section 85ZZJC limits any other power of ASIO, the ACC or an intelligence and security agency to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed or information relating to a person having been charged with and found guilty of an offence but discharged without conviction. This would make clear that new section 85ZZJC is not intended to be the sole source of statutory authority for the use of convictions information, and use permitted under any other law (for example, the ASIO Act or ACC Act) is not limited by new section 85ZZJC.

Interpretation

430. New subsection 85ZZJC(8) would provide that section 85ZZJC has effect despite subsection 85ZP(3) and Divisions 2 and 3 of the Crimes Act, and despite any law of a state or territory. This new subsection is intended to disapply subsection 85ZP(3) from operating where ASIO, the ACIC, or intelligence or security agencies use or disclose the information for the relevant purposes set out in section 85ZZJC.

431. New subsection 85ZZJC(9) would insert a range of definitions for the purposes of new section 85ZZJC. The definitions of ACC officer, ASIO and ASIO officer would have the same meaning as in other provisions of Part VIIC.

Item 37 Application provision

432. This item provides that the amendments made by Division 3 of Part 2 of Schedule 2 apply in relation to the use or disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement. This provision would clarify that the authorisations to use or disclose apply to information regardless of when that information was obtained by the agency. It is intended that the term 'obtained' be read broadly and would include information that is received and gathered.

Division 4—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

Item 38 Paragraph (wa) of Schedule 1

433. This item amends paragraph (wa) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to omit the reference to 'Division 2A of Part II' and substitute a reference to 'Part III'. The effect of this is that any decision made by the ACIC, CEO or the Minister under Part III of the ACC Act are excluded from judicial review under the ADJR Act.

434. The exclusion of decisions made under Part III is necessary as the public review of such decisions would likely involve the disclosure of highly sensitive information, which could be prejudicial to law enforcement or intelligence interests. This could include, for example, sensitive information surrounding the ACIC's technical capabilities, and sensitive information received from state and territory law enforcement agencies.

435. This amendment does not have the effect of entirely excluding judicial review of decisions under Part III to the ACC Act. A person who is the subject of a decision under Part III is still entitled to seek judicial review under subsection 75(v) of the Constitution or section 39B of the *Judiciary Act 1903*.

Administrative Review Tribunal Act 2024

Item 39 Section 4 (definition of *criminal intelligence assessment*)

436. This item amends the definition of 'criminal intelligence assessment' in section 4 to replace the reference to 'Division 2A of Part II' with 'Part III'. This clarifies that references to a criminal intelligence assessment throughout the ART Act refer to an

adverse criminal intelligence assessment within the meaning of the new criminal intelligence assessment framework in Part III to the ACC Act.

Item 40 Section 4 (subparagraph (b)(iii) of the definition of *exempt security record decision*)

437. This item amends the definition of 'exempt security record decision' in subparagraph 4(b)(iii) to replace the reference to 'Division 2A of Part II' with 'Part III'. This clarifies that references to 'exempt security record decision' throughout the ART Act include a reference to a decision of the National Archives of Australia in respect of access to a record of the ACIC relating to a criminal intelligence assessment within the meaning of the new criminal intelligence assessment framework in Part III to the ACC Act.

Item 41 Section 4 (definition of *law enforcement interests*)

438. This item repeals the current definition of 'law enforcement interests' in section 4. A new defined term 'law enforcement or intelligence interests' will be inserted in section 4.

Item 42 Section 4

439. This item inserts a new defined term 'law enforcement or intelligence interests' in section 4. This term is defined to have the same meaning as provided in Part III to the ACC Act. 'Law enforcement or intelligence interests' is defined broader than 'law enforcement interests' to include in paragraph 52(a) the consideration of 'avoiding prejudice'.

Item 43 Subsection 141(3) (table item 1, column 2)

440. This item amends subsection 141(3) (table item 1, column 2) by replacing the reference to a certificate under 'subsection 36C(5)' with the equivalent 'subsection 54D(7)' in new Part III to the ACC Act. This amendment aligns the ART Act with new Part III of the ACC Act.

441. Section 141 sets out provisions relating to documents an agency head must provide in proceedings in the ART for the review of certain intelligence and security decisions. Subsection 141(2) provides general requirements, while the table in subsection 141(3) details the specific documents agency heads are required to provide where a non-disclosure certificate has been issued under another Act. Currently, table item 1, column 2 refers to a 'Certificate under subsection 36C(5) of the *Australian Crime Commission Act 2002*' and column 3 outlines the documents required where such a certificate has been issued.

Item 44 Paragraph 156(2)(b)

442. This item repeals and replaces paragraph 156(2)(b) with 'law enforcement or intelligence interests'. This ensures that the Tribunal's duty in section 156 includes a duty not to communicate or make available to a person information that would prejudice 'law enforcement and intelligence interests'. This amendment will align the ART Act with new Part III to the ACC Act.

Item 45 Paragraph 158(3)(b)

443. This item replaces the term 'law enforcement interests' in paragraph 158(3)(b) with 'law enforcement or intelligence interests'. This enables the responsible Minister to issue a security certificate, certifying that disclosing evidence or making a submission would be contrary to the public interest because, in the case of a criminal intelligence assessment decision, it would prejudice law enforcement or intelligence interests. This amendment aligns the ART Act with new Part III to the ACC Act.

444. A security certificate confirms that neither the applicant in a proceeding, nor their representative (unless Ministerial consent has been given), is allowed to be present when the evidence is adduced or the submission is made (subsection 158(4)). Security certificates cannot be issued in exempt security record decision proceedings (subsection 158(1)).

Item 46 Paragraph 161(2)(c)

445. This item replaces the term 'law enforcement interests' in paragraph 161(2)(c) with 'law enforcement or intelligence interests'. In a proceeding for the review of a criminal intelligence assessment, this enables the responsible Minister to issue a public interest certificate, certifying that the disclosure of specified information or a document would be contrary to the public interest because it would prejudice law enforcement and intelligence interests. This amendment aligns the ART Act with new Part III to the ACC Act.

446. Subject to the requirements in section 161, a public interest certificate requires the Tribunal to do all things necessary to ensure that the specified information or a document is not disclosed or given to persons, other than those listed in subparagraphs 161(5)(a)(i)-(iii). Security certificates cannot be issued in exempt security record decision proceedings (paragraph 161(1)(a)).

Item 47 Subsection 162(1) (table item 1, column 2)

447. This item amends subsection 162(1) (table item 1, column 2) by replacing the reference to 'subsection 36C(5)' with the equivalent 'subsection 54D(7)' in new Part III. This amendment clarifies that a non-disclosure certificate issued under new subsection 54D(7) in Part III to the ACC Act does not excuse a person from disclosing information, or giving a document, to the Tribunal for the purposes of the proceeding if the person is required by or under this Act to do so. This amendment aligns the ART Act with new Part III to the ACC Act.

448. Section 162(3) provides that the Tribunal must do all things necessary to ensure that the information or document is not disclosed or given to persons other than those listed in subparagraphs 162(3)(a)(i)-(iii).

AusCheck Act 2007

Item 48 Paragraph 5(ba)

449. This item amends the definition of 'background check' in section 5(ba) by replacing the reference 'as defined in section 36A' with 'within the meaning of Part III'. This amendment clarifies that references to a background check in relation to an individual

includes references to an assessment of information relating to matters relevant to a criminal intelligence assessment, as defined in Part III to the ACC Act. This aligns the AusCheck Act with new Part III to the ACC Act.

AusCheck Regulations 2017

Item 49 Section 4 (definition of *adverse criminal intelligence assessment*)

450. This item amends the definition of 'adverse criminal intelligence assessment' in section 4 to refer to the new definition in Part III to the ACC Act. This aligns the AusCheck Regulations with new Part III to the ACC Act.

Item 50 Section 4 (definition of *high risk criminal intelligence assessment*)

451. This item repeals the definition of 'high risk criminal intelligence assessment' in section 4. This definition included an additional threshold to categorise an adverse criminal intelligence assessment as a 'high risk criminal intelligence assessment' if the person issuing the assessment reasonably believed that preventing the individual from holding an ASIC or MSIC was necessary or desirable to prevent the use of aviation, or maritime transport or an offshore facility, in connection with serious and organised crime.

452. This definition and the associated threshold are no longer required. The threshold 'adverse criminal intelligence assessment', which is already utilised in the AusCheck framework, will be used in place of 'high risk' throughout the AusCheck Regulations.

453. By repealing this definition, this item aligns the AusCheck Regulations with new Part III to the ACC Act.

Item 51 Subsection 13(4A) (heading)

454. This item amends the heading to subsection 13(4A) by replacing the reference to 'high risk' with reference to 'adverse'. Consistent with item 50, the definition of 'high risk criminal intelligence assessment' will be repealed. This amendment relates to item 52, which substitutes 'high risk criminal intelligence assessment' with an 'adverse criminal intelligence assessment' for the purpose of that subsection.

Item 52 Subsection 13(4A)

455. This amendment replaces 'high risk' in subsection 13(4A) with 'adverse'. This will clarify that the Secretary must advise the issuing body whether or not the Department has been given an adverse criminal intelligence assessment of the individual, rather than a 'high risk criminal intelligence assessment'. The threshold of 'high risk criminal intelligence assessment' is no longer required.

Item 53 Subsection 14(6) (heading)

456. This item amends the heading to subsection 14(6) by replacing the reference to 'high risk' with a reference to 'adverse'. Consistent with item 50, the definition of high risk criminal intelligence assessment will be repealed. This amendment relates to item 54 which substitutes 'high risk criminal intelligence assessment' with 'an adverse criminal intelligence assessment' for the purpose of that subsection.

Item 54 Subsection 14(6)

457. This item replaces ‘high risk’ in subsection 14(6) with ‘adverse’. This ensures that subsection 14(6) relates to the threshold of ‘adverse criminal intelligence assessment’, as the threshold of ‘high risk criminal intelligence assessment’ is no longer required.

Item 55 Subparagraph 23(b)(iia)

458. This item replaces ‘high risk’ in subparagraph 23(b)(iia) with ‘adverse’ as a consequence of items 49 and 50. This will clarify that the Secretary must advise the issuing body for the ASIC or MSIC whether or not the Department has been given an adverse criminal intelligence assessment of the individual, rather than a ‘high risk criminal intelligence assessment’. The threshold of ‘high risk criminal intelligence assessment’ is no longer required.

Item 56 In the appropriate position in Part 5

459. This item inserts Division 9—Combatting Antisemitism, Hate and Extremism Act 2026 into the AusCheck Regulations. This item sets out how amendments to sections 13, 14 and 23 of the AusCheck Regulations, made by Part 2 of Schedule 2 to the Bill apply to background checks.

460. Subsection 45(1) provides that amendments apply to any application for a background check made on or after commencement of this section; and any application for a background check made before commencement that had not yet been completed at that time.

461. This ensures that updated provisions governing advice about background checks and the terminology changes, particularly changing reference from ‘high risk criminal intelligence assessment’ to ‘adverse criminal intelligence assessment’ apply consistently to all checks that are in progress or lodged on or after commencement.

462. Subsection 45(2) ensures the former ‘high risk criminal intelligence assessment’ terminology is not retained after commencement. For background checks already underway at commencement, subsections 13(A) and 14(6) and subparagraph 23(b)(iia), as in force after commencement, are to be read as if any reference as if a reference to ‘adverse criminal intelligence assessment’ included a reference to ‘high risk intelligence assessment’ (as previously defined).

463. This transitional rule ensures continuity and avoids any gap in interpretation for checks initiated using the previous terminology. In effect, this item maintains the integrity of the background checking process, ensuring consistent outcomes and advice requirements apply across all relevant applications and cause minimal disruption for decision makers and applicants.

Australian Border Force Act 2015

Item 57 After paragraph 46(j)

464. This item inserts paragraph 46(ja) into the list of permitted purposes set out in section 46. This provides that a purpose relating to the ACIC’s functions under Part III of the ACC Act is a permitted purpose for the purposes of sections 44 and 45 of the *Australian*

Border Force Act 2015 (ABF Act). This enables the ABF to disclose information in accordance with sections 44 and 45 for a purpose relating to the performance of the ACIC's criminal intelligence assessment function covered by paragraph 7A(da) of the ACC Act.

465. Sections 44 and 45 of the ABF Act outline requirements for the disclosure of both Immigration and Border Protection information that does, and does not, contain personal information, to certain bodies and persons and in accordance with agreements.

Aviation Transport Security Act 2004

Item 58 Section 4

466. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview at section 4 of the ATS Act. This clarifies that Part 3 of the ATS Act relates to requirements directed at safeguarding against unlawful interference with aviation and preventing the use of aviation in connection with serious crime and organised crime.

Item 59 Section 9

467. This item inserts the new defined term 'serious and organised crime' in section 9, which has the same meaning as in new section 54B of Part III to the ACC Act. This term will replace the term 'serious crime' in the ATS Act.

468. This amendment affects provisions in the ATS Act that enable certain types of regulations to be prescribed, or administrative decisions to be made, for the purpose of preventing the use of aviation in connection with serious crime.

469. This amendment incorporates the new definition of 'serious and organised crime' for the purpose of the relevant aviation security provisions.

Item 60 Section 27

470. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview at section 27 of Part 3, consistent with item 59. This clarifies that regulations under Division 4A of this Part will 'prescribe requirements for the purposes of preventing the use of aviation in connection with serious and organised crime'.

Item 61 Division 4A of Part 3 (heading)

471. This item repeals the Division 4A heading 'Serious crime' and replaces it with 'Serious and organised crime', consistent with item 59.

Item 62 Section 38AA

472. This item replaces 'serious crime' in section 38AA with 'serious and organised crime'. This clarifies that the purpose of Division 4A of Part 3 is 'to prevent the use of aviation in connection with serious and organised crime'.

Item 63 Subsection 38AB(1)

473. This item replaces 'serious crime' in subsection 38AB(1) with 'serious and organised crime', consistent with item 59. This clarifies that regulations made under section 38AB may, for the purposes of preventing the use of aviation in connection with serious or organised crime, prescribe requirements in relation to areas and zones established under Part 3.

474. Section 38AB enables, for example, the making of regulations requiring background checks for individuals applying to holding an ASIC. The ability to make such regulations is necessary given that holding an ASIC allows personnel access to secure aviation zones or areas. This mitigates the risk of personnel using access to secure aviation zones or areas in connection with serious and organised crime.

Item 64 Subsection 44C(1)

475. This item replaces 'serious crime' in subsection 44C(1) with 'serious and organised crime', consistent with item 59. This clarifies that regulations for examining and clearing cargo under section 44C may be prescribed for the purposes of preventing the use of aviation in connection with serious and organised crime.

476. Personnel who are examining and clearing cargo are required to hold an ASIC and have therefore been subject to a criminal intelligence assessment. Managing personnel risk through a criminal intelligence assessment mitigates the risk serious and organised crime presents to cargo operations in aviation.

Aviation Transport Security Regulations 2005

Item 65 Subregulation 6.01(1) (definition of *adverse criminal intelligence assessment*)

477. This item amends subregulation 6.01(1) by replacing the reference to 'section 36A' with 'Part III' in the definition of 'adverse criminal intelligence assessment'. This clarifies that where the term 'adverse criminal intelligence assessment' is used throughout the ATS Regulations, it has the same meaning as in section 54 of Part III to the ACC Act.

Item 66 Subregulation 6.01(1) (note to the definition of *adverse criminal intelligence assessment*)

478. This item amends the note to the definition of 'adverse criminal intelligence assessment' in subregulation 6.01(1). This amendment replaces the reference to 'section 36D and Subdivision C of Division 2A of Part II' with the equivalent references, 'section 54E and Division 4 in the new Part III' to the ACC Act.

479. This amendment aligns the ATS Regulations with new Part III to the ACC Act, as provisions related to a person's notification and review rights in relation to an adverse criminal intelligence assessment will be located in section 54E and Division 4 of Part III to the ACC Act.

Item 67 Paragraph 6.27AA(3)(c)

480. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.27AA(3)(c), consistent with item 59. This clarifies that the Secretary may apply to the

Secretary of Home Affairs for a background check on a person who is an applicant for an ASIC, or the holder of an ASIC, if Secretary considers on reasonable grounds that there is a risk that the person would use aviation in connection with serious and organised crime.

Item 68 Paragraph 6.28(1)(ea)

481. This item replaces 'person issuing the assessment' with 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.28(1)(ea). This amendment clarifies that, for the purpose of issuing an ASIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an ASIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 69 Paragraph 6.28(1)(ea)

482. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.28(1)(ea), consistent with item 59. This clarifies that one of the conditions for the issue of an ASIC is that the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the person proposed to be issued an ASIC from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 70 Paragraph 6.28(4G)(a)

483. This item inserts a reference to paragraph 6.28(1)(ea) into paragraph 6.28(4G)(a). This requires the issuing body to ensure that a person meets the criteria in paragraph 6.28(1)(ea), in addition to paragraphs 6.28(1)(a), (b) and (c), before an ASIC can be issued under subregulation 6.28(4A) or (4D). The amendment ensures that an issuing body must not issue an ASIC if it has not been notified in writing by the Secretary that an ASIC applicant has not been given an adverse criminal intelligence assessment.

484. Under regulation 6.28, an issuing body may only issue an ASIC to a person if the criterion listed in paragraphs 6.28(1)(a) – (f) is met. Subregulation 6.28(4G) sets out the requirements that must be met before an ASIC can be issued under subregulation (4A) or (4D).

Item 71 Subparagraph 6.42A(1)(b)(ii)

485. This item replaces 'serious crime' with 'serious and organised crime' in subparagraph 6.42(1)(b)(ii), consistent with item 59. This clarifies that one of the conditions for which the Secretary may, in writing, direct an issuing body to suspend an ASIC is if the holder of the ASIC has been convicted of an aviation-security-relevant offence, but has not yet been sentenced for the offence, and the Secretary reasonably considers that there is a risk that the holder of the ASIC may use aviation in connection with serious and organised crime.

Item 72 Paragraph 6.43(2)(bb)

486. This item replaces 'person issuing the assessment' with the 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.43(2)(bb). This amendment clarifies

that, for the purpose of cancelling an ASIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an ASIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 73 Paragraph 6.43(2)(bb)

487. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.43(2)(bb), consistent with item 59. This clarifies that an issuing body must immediately cancel an ASIC it has issued if the Secretary has notified it in writing that the Department has been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the holder from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious and organised crime; and, one or more conditions listed in paragraphs 6.43(2)(c) – (h) is met.

Item 74 Subregulation 6.44(2)

488. This item replaces 'serious crime' with 'serious and organised crime' in subregulation 6.44(2) consistent with item 59. This clarifies that where an issuer cancels an ASIC, visitor identification card or temporary aircrew card in the circumstances outlined in subregulation 66.4(1) and provides the Secretary with the required information in subregulation 6.44(1), the Secretary may pass this information on to other issuers if the Secretary thinks that doing so will help to prevent unlawful interference with aviation or the use of aviation in connection with serious and organised crime.

Item 75 In the appropriate position in Part 10

489. This item inserts Division 25—Amendments made by the Combatting Antisemitism, Hate and Extremism Act 2026 into the ATS Regulations.

490. This item describes the application of amendments made by this Bill. It clarifies the temporal scope of each amendment to ensure certainty for issuing bodies and holders of ASICs. It notes that the application of thresholds referenced in Part III of the ACC Act:

- amendments to paragraph 6.27AA(3)(c) (background check application criteria) apply to applications made on or after commencement.
- amendments to regulation 6.28 (criteria for issuing ASICs) apply to ASICs issued on or after commencement.
- amendments to subparagraph 6.42A(1)(b)(ii) (Secretary's suspension directions) applies to directions made on or after commencement.
- amendments to paragraph 6.43(2)(bb) (cancellation of ASICs based on adverse criminal intelligence assessments) apply to cancellations occurring on or after commencement.
- amendments to subregulation 6.44(2) (cancellation of ASICs, VICs and TACs) applies to cancellations occurring on or after commencement, regardless of when the card was issued.

491. The new requirements, including the clarified threshold for the ACIC CEO's reasonable belief and the updated terminology referring to 'serious and organised crime' apply prospectively, without affecting decisions made under the previous framework.

Crimes Act 1914

Item 76 After paragraph 3ZQU(1)(d)

492. This item inserts paragraph 3ZQU(1)(da) in subsection 3ZQU(1) of the Crimes Act to include 'the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002'* in the list of purposes for which things seized under Part IAA, or the original or a copy of a document produced under Division 4B of the Crimes Act, may be used and shared. This amendment is intended to enable a constable or Commonwealth officer to use or share material seized under a section 3E search warrant for the purpose of making or giving a criminal intelligence assessment under new Part III to the ACC Act. This would enable the ACIC to use material seized under a section 3E search warrant if it is necessary for the purpose of making or giving a criminal intelligence assessment including material that has already been made available to the ACIC by a constable or Commonwealth officer of another agency under subsection 3ZQU(1).

Maritime Transport and Offshore Facilities Security Act 2003

Item 77 Section 10

493. This item inserts a new definition of 'serious and organised crime' in section 10, which has the same meaning as in new section 54B of Part III to the ACC Act. This term will replace the term 'serious crime' in the ATS Act and MTOFS Act frameworks in order to better align these frameworks with the ACC Act.

494. This amendment affects provisions in the MTOFS Act that enable certain types of regulations to be prescribed, or administrative decisions to be made, for the purpose of preventing the use of maritime transport or offshore facilities in connection with serious crime.

495. This amendment incorporates the new definition of 'serious and organised crime' for the purpose of the relevant maritime security provisions.

Item 78 Section 101

496. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview of at section 101, consistent with item 77. This clarifies that regulations under Division 6 will 'prescribe requirements for the purposes of preventing the use of maritime transport or offshore facilities in connection with serious and organised crime.'

Item 79 Division 6 of Part 6 (heading)

497. This item repeals the Division 6 heading, 'Serious crime' and replaces it with 'Serious and organised crime', consistent with item 77.

Item 80 Section 113E

498. This item replaces 'serious crime' in section 113E with 'serious and organised crime', consistent with item 77. This clarifies that the purpose of Division 6 of Part 6 is 'to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime'.

Item 81 Subsection 113F(1)

499. This item replaces 'serious crime' in subsection 113F(1) with 'serious and organised crime', consistent with item 77. This clarifies that regulations may be prescribed in relation to zones established under this Part 6, for the purposes of preventing the use of maritime transport or offshore facilities in connection with serious and organised crime.

500. Section 113F enables, for example, the making of regulations requiring background checking for individuals applying to holding an MSIC. The ability to make such regulations is necessary given that holding an MSIC allows personnel access to secure maritime zones or areas. This mitigates the risk of personnel using access to secure maritime zones or areas in connection with serious and organised crime.

Maritime Transport and Offshore Facilities Security Regulations 2003

Item 82 Subregulation 6.07B(1) (definition of *adverse criminal intelligence assessment*)

501. This item amends the definition of 'adverse criminal intelligence assessment' in subregulation 6.07B(1) by replacing 'section 36A' with 'Part III'. This ensures that where the term 'adverse criminal intelligence assessment' is used throughout the MTOFS Regulations, it has the same meaning as in section 54 of Part III to the ACC Act.

Item 83 Paragraph 6.08C(1)(da)

502. This item omits 'person issuing the assessment' and substitutes 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08C(1)(da). The amendment clarifies that, for the purpose of issuing an MSIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 84 Paragraph 6.08C(1)(da)

503. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.08C(1)(da), consistent with item 77. This clarifies that one of the conditions for the issue of an MSIC is that the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the person proposed to be issued an MSIC from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious and organised crime.

Item 85 At the end of subregulation 6.08C(5)

504. This item inserts a reference to paragraph 6.08C(1)(da) into paragraph 6.08C(5). The effect of this item is that it requires the issuing body to ensure that a person meets the criteria in paragraph 6.08C(1)(da), in addition to paragraphs 6.08C(5)(a) and (b), before an MSIC is issued under subregulation 6.08C(5).

505. Under regulation 6.08C, an issuing body may only issue a MSIC to a person if the criterion listed in paragraphs 6.08C(1)(a) – (e) are satisfied. Subregulation 6.08C(5) sets out the requirements that must be met before a MSIC can be issued under subregulation 6.08C(5). Paragraph 6.08C(1)(da) has been added to ensure that an issuing body must not issue an ASIC if the issuing body has not been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment.

Item 86 Paragraph 6.08D(1)(b)

506. This item replaces 'person issuing the assessment' with 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08D(1)(b). The amendment clarifies that, for the purpose of issuing a disqualifying notice, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that a MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 87 Paragraph 6.08D(1)(b)

507. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.08D(1)(b), consistent with item 77. Regulation 6.08D provides for the issue of a disqualifying notice. This amendment clarifies that regulation 6.08D applies if, as a result of a background check, the Department is given an adverse criminal intelligence assessment that indicates the ACIC CEO reasonably believes that preventing an applicant for a MSIC from holding a MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious and organised crime.

Item 88 Subregulation 6.08D(1) (note)

508. This item amends the note to subregulation 6.08D(1) by replacing 'section 36D and Subdivision C of Division 2A of Part II' of the ACC Act, with 'section 54E and Division 4 of Part III'. This amendment aligns the MTOFS Regulations with new Part III to the ACC Act, as provisions related to a person's notification and review rights in relation to an adverse criminal intelligence assessment will be in section 54E and Division 4 of Part III when Part III is inserted.

Item 89 Subregulation 6.08D(3)

509. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08D(1), consistent with item 77. This clarifies that, if the Secretary thinks it is necessary to do so in the context of the issue of disqualifying notice, they may undertake any of the actions listed in paragraphs 6.08D(3)(a) and (b) to prevent unlawful interference with

maritime transport or offshore facilities, or to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 90 Subregulation 6.08F(8)

510. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08F(8), consistent with item 77. Regulation 6.08F provides for MSIC applications to the Secretary if the person has an adverse criminal record. This amendment clarifies that the Secretary may undertake any of the actions listed in paragraphs 6.08F(8)(a) and (b) if he or she thinks it is necessary to do so to prevent unlawful interference with maritime transport or offshore facilities, or to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 91 Paragraph 6.08LC(1)(c)

511. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08LC(1)(c), consistent with item 77. Regulation 6.08LC provides for the application by the Secretary for a background check on an applicant for, or holder of, an MSIC. This clarifies that the Secretary may apply to the AGD Secretary for a background check on a person who is an applicant for, or the holder of, an MSIC, if the Secretary considers on reasonable grounds that there is a risk that the person would use maritime transport or an offshore facility in connection with serious and organised crime.

Item 92 Subparagraph 6.08LE(1)(b)(ii)

512. This item replaces 'serious crime' with 'serious and organised crime' in subparagraph 6.08LE(1)(b)(ii), consistent with item 77. Regulation 6.08LE provides for the suspension of MSICs at the Secretary's direction. This clarifies that one of the conditions for which the Secretary may, in writing, direct an issuing body to suspend a MSIC is if the Secretary reasonably considers that there is a risk that the holder of the MSIC who has been convicted of an maritime-security-relevant offence, but has not yet been sentenced, may use maritime transport or an offshore facility in connection with serious and organised crime.

Item 93 Paragraph 6.08M(1)(cb)

513. This item omits 'person issuing the assessment' and substitutes 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08M(1)(cb). The amendment clarifies that, for the purpose of requiring an issuing body to cancel a MSIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that a MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 94 Paragraph 6.08M(1)(cb)

514. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.08M(1)(cb), consistent with item 77. This clarifies that an issuing body must immediately cancel a MSIC issued by the body if the Secretary has notified the issuing body in writing that the Department has been given an adverse criminal intelligence

assessment that indicates the ACIC CEO reasonably believes that preventing the holder from holding a MSIC is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 95 Subregulation 6.08O(3)

515. This item replaces 'serious crime' with 'serious and organised crime' in subregulation 6.08O(3), consistent with item 77. This clarifies that where an issuer cancels a MSIC for a reason mentioned in paragraph of subregulation 6.08M(1), the Secretary may use the notification powers in subregulation 6.08O(2) if he or she thinks that doing so may prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 96 In the appropriate position in Schedule 2

516. This item inserts Part 15—Amendments made by the Combatting Antisemitism, Hate and Extremism (Firearms and Customs Laws) Act 2026 into the MTOFS Regulations

517. This item describes the application of amendments made by this Bill. It clarifies the temporal scope of each amendment to ensure certainty for issuing bodies and holders of MSICs. It notes that the application of thresholds referenced in Part III of the ACC Act:

- amendments to regulation 6.08C (criteria for issuing MSICs) apply to MSICs issued on or after commencement,
- amendments to paragraph 6.08D(1)(b) (threshold for disqualifying notices based on adverse criminal intelligence assessments) apply to assessments given on or after commencement,
- amendments to subregulations 6.08D(3) and 6.08F(8) (Secretary's directions and notifications) apply to directions made on or after commencement,
- amendments to paragraph 6.08LC(1)(c) (background check applicants) apply to applications made on or after commencement,
- amendments to subparagraph 6.08LE(1)(b)(ii) (suspension directions) apply to directions made on or after commencement, and
- amendments to regulations 6.08M and 6.08O (cancellation and reporting of MSICs) apply to cancellations occurring on or after commencement, regardless of when the MSIC was issued.

518. The new requirements, including the clarified threshold for the ACIC CEO's reasonable belief and the updated terminology referring to 'serious and organised crime' apply prospectively, without affecting decisions made under the previous framework.

Surveillance Devices Act 2004

Item 97 After paragraph 45(5)(g)

519. This item amends subsection 45(5) by inserting additional exceptions to the restrictions on the use, recording, communication or publication of protected information. These

amendments will permit the use, recording, communication or publication, or admission in evidence of protected information if it is necessary to do so for the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act and a proceeding relating to the review of an adverse criminal intelligence assessment.

520. This item is intended to ensure the ACIC can use protected information obtained under a surveillance device warrant, computer access warrant, data disruption warrant, emergency authorisation or tracking device authorisation if it is necessary to do so for the purpose of its criminal intelligence assessment function, including as part of the proposed background checks for firearms licensing purposes. This also item is also intended to enable other agencies to communicate protected information to the ACIC if it is necessary to do so for the performance of the ACIC's criminal intelligence assessment function.

521. Paragraph 45(5)(gb) will ensure protected information may be used, recorded, communicated or published, or may be admitted in evidence, if it is necessary to do so for a proceeding relating to the review of an adverse criminal intelligence assessment, noting applicants would retain the right to seek judicial review of adverse assessments and background checks. Subject to the laws of the relevant jurisdiction, an applicant would also retain the right to seek merits review of final decisions on firearms licence applications made by a state or territory firearms licensing authority.

522. Section 44 defines 'protected information' for the purposes of the *Surveillance Devices Act 2004* (SD Act) by listing broadly different types of protected information at paragraphs (a) – (d). Section 45 provides for two offences with respect to the unlawful use, recording, communication, publication or admission in evidence of protected information.

Item 98 After subsection 45(7)

523. This item inserts new subsection 45(7A) after subsection 45(7). This amendment provides that subsection 45(7) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item will permit the ACC to communicate information that would otherwise be restricted by subsection 45(7) in connection with the performance of this function. For example, this would include proceedings relating to the making or giving of a criminal intelligence assessment.

524. This amendment enables the ACIC to communicate information obtained through the use of a surveillance device by another law enforcement officer of a particular law enforcement agency for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated for a different purpose.

525. Subsection 45(7) provides that protected information obtained through the use of a surveillance device by a law enforcement officer of a particular law enforcement agency that is communicated to another law enforcement agency, or an agency that is not a law enforcement agency, may not, except for the purpose of bringing a relevant proceeding, be communicated to any person who is not a member of that second agency.

Item 99 After paragraph 45B(5)(b)

526. This item amends subsection 45B(5) by inserting an additional exception to the restrictions on the use, recording, communication or publication of protected network activity warrant information in relation to the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

527. This amendment enables the ACIC to use protected network activity warrant information for its criminal intelligence assessment function.

528. Section 44A defines 'protected network activity warrant information' for the purposes of the SD Act by listing broadly different types of protected network activity warrant information at paragraphs (a) – (e). Subsection 45B(10) provides that network activity warrant information may be admitted in evidence in certain circumstances. Paragraph 45(10)(b) provides that protected network activity warrant information may be admitted in evidence in a proceeding that is not a criminal proceeding.

Telecommunications (Interception and Access) Act 1979

Item 100 Subsection 5(1) (before subparagraph (aa)(i) of the definition of *permitted purpose*)

529. This item extends the definition of permitted purpose in section 5 to include, in the case of the ACC, the performance of its function covered by new paragraph 7A(da) of the ACC Act.

530. Interception agencies may only deal with intercepted information or interception warrant information for a permitted purpose. For example, where permitted by section 67. Similarly, a criminal law-enforcement agency may only communicate or use lawfully accessed information (from a stored communication) and stored communications warrant information for a permitted purpose, such as where permitted by section 139.

531. This amendment would have the effect of enabling lawfully intercepted information and interception warrant information to be communicated, used, or recorded for the performance of the ACIC's criminal intelligence assessment function.

532. This amendment would also affect section 79 of the *Telecommunications (Interception and Access) Act 1979* (TIA Act) by requiring the chief officer of an agency to be satisfied that the restricted record is not likely to be required for a permitted purpose in relation to the agency before causing the restricted record to be destroyed.

533. Section 5 defines a restricted record as a record other than a copy, that was obtained by means of an interception, whether or not in contravention of subsection 7(1), of a communication passing over a telecommunications system, but does not include a record of general computer access intercept information, a record of data disruption intercept information or a record of network activity warrant intercept information.

Item 101 After paragraph 5B(1)(a)

534. This item amends the definition of 'exempt proceeding' in subsection 5B(1) to allow agencies to give lawfully obtained information in evidence in a proceeding by way of review of a decision of ASIO to make an adverse security assessment or a qualified

security assessment, or a decision of the ACC to make an adverse criminal intelligence assessment.

535. Subsection 63(1) prohibits a person from giving in evidence in a proceeding lawfully intercepted information. Subsection 74(1) relevantly provides that a person may give lawfully intercepted information 'in evidence in an exempt proceeding'. Similarly, section 143 provides that a person may give lawfully accessed information and stored communications warrant information in evidence in an exempt proceeding.

536. This amendment would have the effect of enabling lawfully obtained information to be given in evidence in a proceeding by way of review of a decision of ASIO to make an adverse security assessment or a qualified security assessment, or a decision of the ACC to make an adverse criminal intelligence assessment in line with sections 74 and 143.

Item 102 After subsection 67(1C)

537. This item inserts new subsections 67(1D) and (1E) after subsection 67(1C).

538. New subsection 67(1D) enables an officer of the ACC to communicate to another person, make use of, or make a record of interception warrant information in relation to a warrant issued to another agency for the purpose of the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

539. This amendment clarifies that the restriction in paragraph 67(1A)(c), restricting the communication, use and recording of interception warrant information in relation to a warrant issued to another unless the information was communicated under section 68, would not apply to the ACIC for the purpose of its criminal intelligence assessment function.

540. New subsection 67(1E) provides that new subsection 67(1D) does not apply if the information was obtained by an officer of the ACC by, or in connection with, intercepting a communication when exercising authority under a warrant issued to another agency, or as a result of a communication in accordance with section 66, where the information was obtained by intercepting a communication under a warrant issued to another agency.

541. Subsection 67(1E) clarifies that where the ACIC has obtained interception warrant information as a result of intercepting on behalf of, or providing technical assistance to another agency, it would not be able to communicate, use or make a record of that interception warrant information for the purpose of the ACIC's criminal intelligence assessment function. Subsection 67(1E) is not intended to limit the communication of information to the ACIC under section 68 of the TIA Act.

542. Section 66 of the TIA Act allows an interceptor of a communication to disclose the information to the agency that has been issued the warrant and facilitates an agency conducting interception on behalf of another agency passing the information to the investigative officer within the agency which obtained the warrant.

543. Section 67(1) relates to how intercepted information can be used by agencies. Subsections 67(1A) to (1B) ensure that agencies intercepting on behalf of, or providing technical assistance to another agency, cannot use the information obtained for their own purposes.

Item 103 After paragraph 68(a)

544. Section 68 provides for the communication of lawfully obtained information by the agency that originally obtained the information to other agencies (referred to as the 'originating agency'). This item inserts new subsection 68(aa) after subsection 68(a) to enable the communication of such information to the Chief Executive Officer of the ACC, if the information relates, or appears to relate, to the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

545. This amendment would enable other agencies to communicate lawfully obtained information to the ACIC if the information relates, or appears to relate, to the performance of the ACC's criminal intelligence assessment function.

Item 104 Subsection 73(1)

546. This item is consequential to item 105 which inserts new subsection 73(1A).

Item 105 After subsection 73(1)

547. This item inserts new subsection 73(1A) after subsection 73(1). This amendment provides that subsection 73(1) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item enables the ACC to communicate, make use of, or make a record of, information communicated in accordance with section 63A, subsection 63B(2), 63C(2) or 63D(2), section 64A or 67, subsection 71(3) or subsection 73(1) in connection with the performance of this function.

548. This amendment will enable the ACIC to communicate, use or record lawfully intercepted information and interception warrant information for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated to the ACIC for a different purpose.

549. Subsection 73(1) provides that a person to who information has been communicated in accordance with section 63A, subsection 63B(2), 63C(2) or 63D(2), section 64A or 67, subsection 71(3) or subsection 73(1) for a purpose may communicate to another person, make use of, or make a record of, that information for that purpose, and for no other purpose.

Item 106 At the end of subsection 139(2)

550. This item amends subsection 139(2) to include an additional exception to the prohibition on dealing with accessed information for purposes connected with the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

551. This amendment would have the effect of enabling lawfully accessed information (other than foreign intelligence information), preservation notice information and stored communications warrant information to be communicated, used, or recorded for the performance of the ACIC's criminal intelligence assessment function.

552. Section 133 prohibits communicating, making use of, making a record of or giving as evidence, lawfully accessed information, information obtained by accessing a stored communication in contravention of section 108 or stored communications warrant

information. Division 2 of Part 3-4 provides exceptions to the prohibition on dealing with accessed information.

Item 107 Section 142

553. This item is a technical amendment related to item 108 which inserts new subsection 142(2).

Item 108 At the end of section 142

554. This item inserts new subsection 142(2) at the end of section 142. This amendment provides that new subsection 142(1) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item enables the ACC to communicate, make use of, or make a record of, information communicated in accordance with subsection 135(4), section 139, 139AA, 139A or 139B, subsection 140(2) or new subsection 142(1) in connection with the performance of this function.

555. This amendment will enable the ACIC to communicate, use or record lawfully access information (other than foreign intelligence information), preservation notice information and stored communications warrant information for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated to the ACIC for a different purpose.

556. Section 142 provides that a person to who information has been communicated under subsection 135(4), section 139, 139AA, 139A or 139B, subsection 140(2) or section 142 for a purpose, may communicate to another person, make use of, or make a record of, that information for that purpose, and for no other purpose.

557. Section 5 defines an officer in the case of the ACC as the Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC. A member of the staff the ACC has the same meaning as in the ACC Act.

Item 109 Section 178 (at the end of the heading)

558. This item is related to item 110 which enables an authorised officer of the ACC to make an authorisation under section 178 for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act, in addition to the enforcement of the criminal law.

Item 110 Subsection 178(3)

559. This item replaces subsection 178(3) to enable an authorised officer of the ACC to make an authorisation under section 178 if satisfied that the disclosure is reasonably necessary for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act, in addition to the enforcement of the criminal law.

560. This amendment would enable the ACIC to authorise the disclosure of telecommunications data for the performance of its criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

561. Section 178 permits disclosure of existing telecommunications data where the disclosure is authorised by an authorised officer of an enforcement agency for the enforcement of the criminal law. Subsection 178(3) states that an authorised officer of an enforcement agency must not authorise the disclosure of telecommunications data unless he or she is satisfied that the disclosure is reasonably necessary for the enforcement of the criminal law.

Item 111 Subsection 180(4)

562. This item is consequential to item 114 which inserts new paragraph 180(4)(c).

Item 112 Paragraph 180(4)(a)

563. This item is consequential to item 114 which inserts new paragraph 180(4)(c).

Item 113 Paragraph 180(4)(b)

564. This item is consequential to item 114 which inserts new paragraph 180(4)(c).

Item 114 At the end of subsection 180(4)

565. This item inserts new paragraph 180(4)(c) at the end of subsection 180(4) to enable an authorised officer of the ACC to make an authorisation under subsection 180(2) if satisfied that the disclosure is reasonably necessary for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act.

566. This amendment would enable the ACIC to authorise the disclosure of telecommunications data for the performance of its criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

567. Section 180 deals with the disclosure of prospective information to a criminal law enforcement agency. Subsections 180(1) and 180(2) provide that a carrier or carriage service provider may disclose telecommunications data that comes into existence during the period that an authorisation is in force if the disclosure is authorised by an authorised officer of a criminal law-enforcement agency.

Item 115 After subparagraph 181A(3)(b)(ii)

568. This item amends paragraph 181A(3)(b) by inserting an additional exemption to the offences in subsections 181A(1) and (2) to enable the disclosure of information or a document relating to authorisations under Division 3 of Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

569. Subsection 181A provides for offences related to the use or disclosure of information that relates to authorisations made under Division 3 of Part 4-1, which are authorisations made by ASIO for the disclosure of information or documents in connection with the performance of its functions. Subsection 181A(3) provides exemptions for offences in relation to the disclosure of information.

570. Information relating to authorisations made under Division 3 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181A(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 116 After subparagraph 181A(6)(b)(ii)

571. This item amends paragraph 181A(6)(b) by inserting an additional exemption to the offences in subsections 181A(4) and (5) to enable the use of information or a document relating to authorisations under Division 3 of Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

572. Subsection 181A(6) provides for exemptions to offences in subsection 181A(4) and 181A(5) in relation to the use of information or documents relating to authorisations made under Division 3 of Chapter 4.

573. Information relating to authorisations made under Division 3 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181A(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 117 After subparagraph 181B(3)(b)(iib)

574. This item amends paragraph 181B(3)(b) by inserting an additional exemption to the offences in paragraphs 181B(1)(a) and (2)(a) to enable the disclosure of information or a document relating to authorisations under Division 4 Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

575. Subsection 181B provides for offences related to the use or disclosure of information that relates to authorisations made under Division 4 of Part 4-1, which are authorisations made by enforcement agencies for the disclosure of information or documents in connection with the performance of their functions. Subsection 181B(3) provides exemptions for offences in relation to the disclosure of information.

576. Information relating to authorisations made under Division 4 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181B(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 118 After subparagraph 181B(6)(b)(iab)

577. This item amends paragraph 181B(6)(b) by inserting an additional exemption to the offences in paragraphs 181B(4)(a) and (5)(a) to enable the use of information or a document relating to authorisations under Division 4 of Part 1-4, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

578. Subsection 181B(6) provides for exemptions to offences in subsection 181B(4)(a) and 181B(5)(a) in relation to the use of information or documents relating to authorisations made under Division 4 of Part 4-1.

579. Information relating to authorisations made under Division 4 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181B(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 119 After subparagraph 182(2)(a)(iiib)

580. This item amends paragraph 182(2)(a) by inserting an additional exemption to the offence in paragraph 182(1) to permit secondary disclosures of non-missing person information if the disclosure is reasonably necessary for the performance by the ACC of its function covered by paragraph 7A(da) of the ACC Act.

581. Section 182 provides for an offence where a person discloses or uses telecommunications data received by reason of a lawful disclosure to an enforcement agency under Division 4 of Part 4-1.

582. The ACIC may hold information and documents disclosed under a Division 4 authorisation. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 120 After subparagraph 182(3)(a)(iib)

583. This item amends paragraph 182(3)(a) by inserting an additional exemption to the offence in paragraph 182(1) to permit the use of non-missing person information if the use is reasonably necessary for the performance by the ACC of its function covered by paragraph 7A(da) of the ACC Act.

584. The ACIC may hold information and documents disclosed under a Division 4 authorisation. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 121 After subparagraph 182B(b)(ivb)

585. This item amends paragraph 182B(b) by inserting an additional exemption to the offences in section 182A to permit the use and disclosure of information if it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

586. The use of information about a journalist information warrant for the purpose of the ACIC making or giving a criminal intelligence assessment would be extremely rare. Only one journalist information warrant was issued to any agency in the reporting period between 1 July 2019 and 30 June 2024. The ACIC has never been issued a journalist information warrant. However, in circumstances where the ACIC held information indicating that the grant of a firearms licence to a person would give rise to risk relating to serious and organised crime, it would be important for this information be able to be used where reasonably necessary to enable the ACIC to perform its criminal intelligence assessment function. This would ensure that criminal intelligence holdings can be used to inform decision making on firearms licensing by firearms licensing authorities and prevent the use of aviation, or maritime transport or an offshore facility, in connection with serious and organised crime.

587. Section 182A provides for offences where a person discloses or uses a journalist information warrant or information about such a warrant. Section 182B outlines the circumstances in which disclosures and use are permitted. An enforcement agency may use or disclose such information to a third party for the specified purposes set out in the section.

Part 3—Transmission of firearms information and other information to ACIC

588. Part 3 of Schedule 2 to the Bill, when enacted, establishes a new information sharing and disclosure framework in the Customs Act to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs and ABF, to the Australian Criminal Intelligence Commission (ACIC) which administers the National Firearms Register (NFR) and the National Criminal Intelligence System (NCIS). The NFR will be an integrated system that connects and draws information from existing Commonwealth, state and territory firearms registries, portals and management systems into one central register. The NFR will provide a life cycle view of registered firearms in Australia, delivering timely and accurate information on firearms, firearm owners and licences across all jurisdictions. The NFR will enhance police and community safety and improve law enforcement capability. The sharing of this firearms information is a vital component of the NFR, including information on the entry or 'birth' of a firearm in Australia. This supports effective and necessary information sharing between federal and state law enforcement agencies, including to track a firearm from import to the end user and ultimately destruction or export.

Customs Act 1901

Item 122 Section 273L

589. This item repeals section 273L of the Customs Act and substitutes that provision with two new sections, being new sections 273L and 273M.

590. These new sections operate to authorise the disclosure and electronic transmission of firearms and other information (including personal information) by the Home Affairs Secretary and the Comptroller-General of Customs to the Australian Criminal Intelligence Commission (ACIC).

591. New subsection 273L(1) confers a power on the Home Affairs Secretary and provides that the Home Affairs Secretary may by discretion disclose firearms information, or other information prescribed by the regulations for the purposes of new subsection 273L(1), that is contained in one or more electronic systems under the control of the Home Affairs Secretary, to the ACIC CEO. The term 'electronic systems' relies on its plain English definition.

592. The note under new subsection 273L(1) outlines that the new section 273L constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the *Privacy Act 1988* (Privacy Act).

593. Without limiting new subsection 273L(1), new subsection 273L(2) provides that the Home Affairs Secretary may by discretion disclose information mentioned in new subsection 273L(1) by arranging for the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO.

594. New subsection 273L(3) confers a new power on the Comptroller-General of Customs and provides that the Comptroller-General of Customs may by discretion disclose firearms information, or other information prescribed by the regulations for the purposes of new subsection 273L(3), that is contained in one or more electronic systems under the control of the Comptroller-General of Customs, to the ACIC CEO. The term electronic systems rely on its plain English definition.

595. Note 1 under new subsection 273L(3) draws the reader's attention to the definition of Comptroller-General of Customs, which is defined in subsection 4(1) of the Customs Act.

596. Note 2 under new subsection 273L(3) outlines that the new section 273L constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the Privacy Act.

597. Without limiting new subsection 273L(3), new subsection 273L(4) provides that the Comptroller-General of Customs may at their discretion disclose firearms information, or other information prescribed by the regulations, by arranging for the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO, such as the NFR or NCIS.

598. For new section 273L, new subsection 273L(5) provides that "firearms information" is information relating to firearms, or other goods relating to relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors). This information may include information relating to the import and export of firearms, information relating to firearms licences or permits, or personal and other information that may be relevant in relation to a person seeking to import or export a firearm or firearm related good.

599. For new section 273L, new subsection 273L(6) provides that information prescribed for the purposes of new subsection 273L(1) or 273L(3) in the regulations must be information relating to goods that are not firearms or other goods relating to firearms. This information may include information relating to the import and export of the goods, information relating to licences or permits, or personal and other information that may be relevant in relation to a person seeking to import or export the goods.

600. For new section 273L, new subsection 273L(7) sets out the meaning of four terms that are referenced throughout the section. The ***ACIC*** refers to the Australian Criminal Intelligence Commission, which is established by the *Australian Crime Commission Act 2002*, and is the agency which will receive information. The ***ACIC CEO*** is the Chief Executive Officer of the ACIC, the statutory head of the agency who will receive the information. The ***Home Affairs Secretary*** means the Secretary of the Department administering the ABF Act, which ensures the term continues to refer to the statutory head of the Department responsible for the ABF (and therefore the systems which will store relevant information provided for in this item). Finally, ***personal information*** is provided as having the same meaning as in the *Privacy Act 1988* – this ensures consistent application of this definition across Commonwealth legislation.

601. New section 273M relates to the entry and transmission of information by computer. The section provides that, if the Customs Act requires or permits information to be entered into or transmitted by a computer, the information may be entered into or transmitted by the computer in an encoded form chosen by either the

Comptroller-General of Customs, or the Home Affairs Secretary (depending on whether it is in relation to new subsection 273L(2)).

602. New section 273M substantially replicates section 273L that is in force prior to the amendments made by this item but expands it to cover information that would be disclosed by the Home Affairs Secretary.

603. The Department of Home Affairs currently collects information on the import and export of goods under the Customs Act. Certain information, being firearms information and other prescribed information, is required to be disclosed to other Commonwealth and state and territory agencies. This is intended to occur through the NFR, which will also enable the end-to-end tracking of firearms, frames, receivers and suppressors and related information for the purpose of public safety.

604. Information required includes ***Immigration and Border Protection information***, as defined in subsection 4(1) of the ABF Act. This information can also include personal information as defined in the subsection 6(1) of the Privacy Act.

605. The purpose of the amendments made by this item is to provide a legal mechanism to share firearms information and associated entity information (such as a person's address, permits and licence information), which are for public safety and law enforcement purposes.

606. The inclusion of personal information having the same meaning as in the Privacy Act results in the information that is collected, if it is considered personal information, being protected through the safeguards established within the Privacy Act. The inclusion of personal information within this information scheme specifically addresses the Australian Privacy Principle (APP) 6. This is further clarified by the note under new subsection 273L(1) outlining that 273L constitutes an authorisation for the purposes of other laws, such as APP6 of the Privacy Act.

607. APP 6.1 states that if an APP entity holds personal information about an individual that was collected for a particular purpose (the ***primary purpose***), the entity must not use or disclose the information for another purpose (the ***secondary purpose***) unless the individual has consented to the use or disclosure of the information; or subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information. Paragraph 6.2(b) allows for the use of disclosure of the information if it is required or authorised by or under an Australian law or court/tribunal order.

608. For the reasons stated above, the inclusion of personal information within firearms information or other prescribed information are integral to the functioning of the NFR and bolsters the accuracy and efficacy of the system.

609. With regards to the automatic transfer of information component being authorised within the legislation, this allows for systems to transfer the firearms information and other prescribed information as defined within the legislation. This allows for consistent and systematic transfer of information which increases the accuracy and efficacy of the information.

Item 123 Application provision

610. This item establishes an application provision in respect of new section 273L, as inserted by Part 3 of Schedule 1 to the Bill, when enacted, and has the effect that new section 273L applies in relation to information disclosed on or after the commencement of this Part, whether the information was obtained or generated before, on or after that commencement.

Part 4—Public safety tests for firearms and weapons

611. Part 4 of Schedule 2 to the Bill, when enacted, introduces a new public safety test for firearms, and a new public safety test for weapons, under the Prohibited Imports Regulations that may be assessed against the importation of firearms and weapons.

612. The public safety test, if applied by the Minister, requires assessment of whether the importation of the firearms or weapon may pose a risk to the health, safety or security of the public or a sector of the public. The elements for consideration for the test are to be outlined within a legislative instrument made by the Minister.

613. The current Prohibited Imports Regulations do not provide a clear basis for refusing a firearms or weapons import where the item poses an unacceptable risk to public safety. The public safety test is consistent with the National Firearms Agreement, which states that possession and use of a firearm is a privilege that is conditional on the overriding need to protect public safety.

Division 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 124 Subregulation 2(1)

614. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert new definitions for “fails the public safety test for firearms”, “fails the public safety test for weapons”, “passes the public safety test for firearms”, “passes the public safety test for weapons”, “public safety test for firearms” and “public safety test for weapons”.

615. The insertion of these terms is required to signpost the meaning given to these terms by new subregulations 4FA(5) and 4FA(4). This ensures that these terms will apply throughout this Part.

616. This amendment enables the terms to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by items 2 to 6, which give meaning to the new terms.

Item 125 At the end of subregulation 4F(1)

617. This item inserts new paragraph 4F(1)(c) at the end of subregulation 4F(1) of the Prohibited Imports Regulations.

618. Subregulation 4F(1) prohibits the importation of a firearm, a firearm accessory, a firearm part, a firearm magazine, ammunition, a component of ammunition or an imitation firearm, unless:

- the firearm, firearm accessory, firearm part, firearm magazine, ammunition, a component of ammunition or an imitation firearm is an article to which an item in Part 2 of Schedule 6 to the Prohibited Imports Regulations applies; and

- the importation is in accordance with the requirements set out in column 3 of the item.

619. New paragraph 4F(1)(c) sets out a requirement in respect of the public safety test for firearms, and has the effect that, in addition to the existing requirements under paragraphs 4F(1)(a) and (b), if the public safety test for firearms is applied under regulation 4FA to the importation of an item, then the importation of the article must pass the public safety test for firearms, as inserted by item 127.

620. This amendment is necessary to enable articles to be exempt from the prohibition of imports under subregulation 4F(1) where the other requirements under that provision are satisfied, and where the public safety test applies, and the articles pass that test.

Item 126 After subregulation 4F(1)

621. This item inserts new subregulation 4F(1AA) into the Prohibited Imports Regulations to ensure that, in addition to the requirements under paragraphs 4F(1)(a) and (b), if the public safety test for firearms is applied under regulation 4FA to the importation of an article, then the importation of the article must pass the public safety test for firearms.

622. Where the public safety test for firearms applies to the importation of an article and the importation fails that test, the importation of the article would be prohibited under regulation 4F of the Prohibited Imports Regulations. New subregulation 4F(1AA) provides an exemption to the prohibition if the importation of the article complies with the public interest test set out in item 8A, or the national interest test set out in item 8B, of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

623. This item clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of an article, may override a decision made under the new public safety test for firearms. That is, where an article has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 127 After regulation 4F

624. The Australian firearms framework involves permission and certification from both the Commonwealth, and by state and territory police prior to importation. Currently, if a proposed firearm or firearm-related article import application meets the legislative requirements (import test) and domestic criteria (e.g., state and territory licensing requirements), there is no clear legislative basis for refusing the application to import that firearm or article. This poses a significant risk to the community as certain firearms, while meeting specific tests for import, may not be appropriate for their intended use in the community. There are limited circumstances where the Minister may consider that while an article may meet all current legislative requirements, there are broader concerns around the importation of that article.

625. The intent of this item is to provide the Minister with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This ensures that, while certain firearms meet specific tests for import, there is an ability to refuse import permission where they may not be suitable for the intended use within the community.

626. This item inserts new regulation 4FA into the Prohibited Imports Regulations to establish a public safety test for firearms which would apply to the importation of goods to which regulation 4F applies. Under this item, the test could be applied to assess an application for permission to import an article, or to consider any documentary evidence for compliance with a test where there is no application (see new subregulation 4FA(1)).

627. New subregulation 4FA(1) provides that at or before the importation of an article to which regulation 4F applies, the Minister may assess whether the importation of the article poses a risk to the health, safety or security of the public or a segment of the public. This is the public safety test.

628. This subregulation allows for the new public safety test for firearms to be applied by the Minister, or their delegate, to the importation of an article either at or before importation. In practice, 'at or before importation' allows for flexibility where import permission is required and has not been sought prior to an article arriving for importation.

629. The note under new subregulation 4FA(1) draws the reader's attention to the prohibition under regulation 4F which applies to the importation of firearms, firearm accessories, firearm parts, firearm magazines, ammunition, components of ammunition and imitation firearms. This clarifies for the reader which articles the new public safety test for firearms may be applied to.

630. New subregulation 4FA(2) operates, for the avoidance of doubt, to clarify that the Minister does not have any obligation to consider whether to assess the importation of an article under new subregulation 4FA(1). This ensures application of the test is discretionary, and does not require the test to be applied to every applicable article being imported.

631. For the assessment of the Minister under new subregulation 4FA(1), new subregulation 4FA(3) provides that the Minister may, at any time, require the person importing the article to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the article.

632. This ensures that, if the original application made under an existing test provides information that may require the public safety test to be applied but it does not provide information to satisfy the public safety test, the Minister may request further information. Subregulation 4FA(3) therefore supports both the Minister's application of the test to the importation of the article, and provides the applicant with further opportunities to provide information which may support the importation of the article passing the test.

633. New subregulation 4FA(4) provides that the importation of an article passes the public safety test for firearms where the Minister assesses the importation of the article under new subregulation 4FA(1) and determines, in accordance with the legislative instrument

made under new subregulation 4FA(6), that the importation of the article does not pose a risk to the health, safety or security of the public or a segment of the public.

634. New subregulation 4FA(5) provides that the importation of an article fails the public safety test for firearms where the Minister assesses the importation of the article under new subregulation 4FA(1) and determines, in accordance with the legislative instrument made under new subregulation 4FA(6) that the importation of the article poses a risk to the health, safety or security of the public or a segment of the public.

635. The note under new subregulation 4FA(5) draws the reader's attention to the general status of articles the importation of which fails the public safety test and provides that if the importation of an article fails the public safety test for firearms, the article is generally prohibited from being imported (see regulations 4F(1) and (1AA)).

636. New subregulation 4FA(6) establishes an instrument-making power and provides that, for the purposes of new regulation 4FA, the Minister must, by legislative instrument, make rules for and in relation to whether the importation of an article to which regulation 4F applies poses a risk to the health, safety or security of the public or a segment of the public.

637. To avoid doubt in respect of new regulation 4FA, new subregulation 4FA(7) has the effect that a reference in this section to the public or a segment of the public includes a reference to emergency services personnel who serve the public.

Item 128 Subregulation 4H(1)

638. This item repeals subregulation 4H(1) of the Prohibited Imports Regulations and substitutes it with two new provisions, being new subregulations 4H(1) and (1A).

639. Subregulation 4H(1), as in force prior to the amendments made by this item, provides that the importation into Australia of a weapon or weapon part of the kind mentioned in an item in Part 2 of Schedule 13 to the Prohibited Imports Regulations is prohibited unless the importation is in accordance with the requirements set out in the item.

640. New subregulation 4H(1) has the effect that, in addition to the requirements under new paragraph 4H(1)(a), if the public safety test for weapons is applied under new regulation 4HA to the importation of a weapon or weapon part of a kind, then the importation of the goods must pass the public safety test for weapons.

641. The additional requirement is necessary to enable goods, to which the public safety test for weapons applies, and where the importation of the goods passes that test, to be exempt from the prohibition of import under subregulation 4H(1) to the extent that the other requirements under that provision are also satisfied.

642. New subregulation 4H(1A) provides that, despite new subregulation 4H(1), the importation of goods that fails the public safety test for weapons is not prohibited if the importation of the goods complies with the public interest test set out in item 9, or the national interest test set out in item 10, of Part 1 of Schedule 13 to the Prohibited Imports Regulations.

643. Where the public safety test for weapons applies to the importation of goods per new subregulation 4H(1) and the importation fails that test, the importation of the goods would

be prohibited under regulations 4H of the Prohibited Imports Regulations. New subregulation 4H(1A) provides an exemption to the prohibition in the circumstance mentioned if the importation of the goods complies with the public interest test set out in item 9, or the national interest test set out in item 10, of Part 1 of Schedule 13 to the Prohibited Imports Regulations.

644. This item clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of a good, may override a decision made under the new public safety test for weapons. That is, where the good has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 129 After regulation 4H

645. This item inserts new regulation 4HA into the Prohibited Imports Regulations to establish a public safety test for weapons which would apply to the importation of goods to which regulation 4H applies. Under this item, the test could be applied to assess an application for permission to import goods, or to consider any documentary evidence for compliance with a test where there is no application (see new subregulation 4HA(1)).

646. New subregulation 4HA(1) provides that at or before the importation of goods to which regulation 4H applies, the Minister may assess whether the importation of the goods poses a risk to the health, safety or security of the public or a segment of the public.

647. This subregulation allows for the new public safety test for weapons to be applied by the Minister, or their delegate, to the importation of a weapon or weapon related good either at or before importation. In practice, 'at or before importation' allows for flexibility where import permission is required and has not been sought prior to the good arriving for importation.

648. The note under new subregulation 4HA(1) draws the reader's attention to the prohibition under regulation 4H which applies to the importation of weapons and weapon parts. This clarifies for the reader which goods the new public safety test for weapons may be applied to.

649. New subregulation 4HA(2) operates, for the avoidance of doubt, to clarify that the Minister does not have any obligation to consider whether to assess the importation of goods under new subregulation 4HA(1). This ensures application of the test is discretionary, and does not require the test to be applied to every applicable good being imported.

650. For the assessment of the Minister under new subregulation 4HA(1), new subregulation 4HA(3) provides that the Minister may, at any time, require the person importing the article to give to the Minister any information that the Minister reasonably required for the purpose of assessing the importation of the article.

651. This ensures that, if the original application made under an existing test provides information that may require the public safety test to be applied but it does not provide information to satisfy the public safety test, the Minister may request further information. Subregulation 4HA(3) therefore supports both the Minister's application of the test to the

importation of the good, and provides the applicant with further opportunities to provide information which may support the importation of the article passing the test.

652. New subregulation 4HA(4) provides that the importation of goods passes the public safety test for weapons when the Minister assesses the importation of the goods under new subregulation 4HA(1) and determines, in accordance with the legislative instrument made under new subregulation 4HA(6), that the importation of the goods does not pose a risk to the health, safety or security of the public or a segment of the public.

653. New subregulation 4HA(5) provides that the importation of goods fails the public safety test for weapons when the Minister assesses the importation of the goods under new subregulation 4HA(1) and determines, in accordance with the legislative instrument made under new subregulation 4HA(6) that the importation of the goods poses a risk to the health, safety or security of the public or a segment of the public.

654. The note under subregulation 4HA(5) draws the reader's attention to the general status of goods the importation of which fails the public safety test and provides that if the importation of goods fails the public safety test for weapons, the goods are generally prohibited from being imported (see regulations 4H(1) and (1A)).

655. New subregulation 4HA(6) establishes an instrument-making power and provides that, for the purposes of new regulation 4HA, the Minister must, by legislative instrument, makes rules for and in relation to whether the importation of goods to which regulation 4H applies poses a risk to the health, safety or security of the public or a segment of the public.

656. To avoid doubt in respect of new regulation 4HA, new subregulation 4HA(7) has the effect that a reference in this section to the public or a segment of the public includes a reference to emergency services personnel who serve the public.

657. The intent of the amendments in this item is the same as that in item 4, to provide the Minister with the authority to further consider whether an importation poses a significant risk to the community, recognising that while certain weapons may pass other import tests, they may not be suitable for their intended use within the community.

Item 130 Part 1 of Schedule 6

658. This item amends Part 1 of Schedule 6 to the Prohibited Imports Regulations to insert a note after "A reference in column 3 of Part 2 of this Schedule to compliance with a test means compliance in the following manner:".

659. The note provides additional clarification to the reader by stating that public safety test for firearms may be applied to an article in addition to the tests in Part 1 of Schedule 6 to the Prohibited Imports Regulations, and that if the importation of the article fails the public safety test, for firearms, the importation of the article will be prohibited unless the Minister gives written permission for the importation of the article under the public interest test or the national interest test (see subregulation 4F(1AA)).

660. This note clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of an article, may override a decision made under the new public safety test for firearms. That is, where an article has failed the

public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 131 Part 1 of Schedule 13

661. This item inserts a note to provide additional clarification to the reader by stating that the public safety test for weapons may be applied to goods in addition to the tests in this Part. If the importation of the goods fails the public safety test for weapons, the importation of the goods will be prohibited unless the Minister gives written permission for the importation of the goods under the public interest test or the national interest test (see subregulation 4H(1A)).

662. This note clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of a good, may override a decision made under the new public safety test for weapons. That is, where the good has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Division 2—Application of amendments made by this Part

Customs (Prohibited Imports) Regulations 1956

Item 132 At the end of regulation 22

663. This item amends regulation 22 of the Prohibited Imports Regulations to add new subregulation 22(2) that has the effect of clarifying the application of the amendments made by Part 4 to Schedule 2 to the Bill, when enacted.

664. This application provision clarifies which goods may be subject to the new public safety tests for firearms and weapons following commencement of Part 4 of Schedule 2 to the Bill. The test will apply to all new import permission applications for firearms and weapons, and related goods, made at or after commencement, and all those applications that had not been finally decided before commencement. This ensures that all applications being considered at the time of commencement will have the same test applied, and will be subject to the same importation requirements.

665. The application provision also applies in similar terms to documentation provided at or after commencement, or before commencement.

Part 5—Importation of Firearms

666. Part 5 of Schedule 2 to the Bill, when enacted, amends the Prohibited Imports Regulations to prescribe new requirements for the importation of firearms and related items, under the Prohibited Import Regulations. The amendments are intended to improve community safety by restricting the number and types of firearms which can be imported to Australia.

667. Division 1 introduces definitions of assisted repeating action and straight pull repeating action firearms and amends the Regulations to impose requirements for the importation of these firearms. These requirements are in line with the existing requirements within Schedule 16 for the importation of semi-automatic firearms. This is designed to prohibit the importation of these firearm types, due to the ability to fire and reload rapidly, for

recreational users and restrict them a more a limited category of firearm licence holders, such as for occupational needs, or government uses.

668. Division 2 introduces requirements for the importation of firearms which are operated using belt-fed ammunition, placing this type of firearm in the highest controlled category.

669. Division 3 introduces restrictions on the importation of magazines with a capacity of more than 30 rounds to allow for importation of these magazines only where they comply with one of the prescribed tests, such as for use with already highly restricted firearms, such as semi-automatic firearms. This explicitly aligns the Prohibited Import Regulations with Commonwealth obligations in the National Firearms Agreement.

670. Division 4 introduces a new handgun test for category H articles under the Prohibited Import Regulations. This Division amends the regulations to require Commonwealth importation for handguns instead of under state and territory police certification. This recognises the limited legitimate circumstances requiring their use, and their desirability on the illegal market by serious and organised crime. This will provide appropriate oversight of handgun importation, aligning with other highly restricted firearms, such as semi-automatic rifles, and provide critical oversight of the number of permits for handguns being authorised and for what purpose.

671. Division 5 introduces identification and serial number requirements to frames and receivers, aligning them with the existing requirements for complete firearms. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items from entry or 'birth' into Australia.

672. Division 6 introduces additional requirements for the importation of skirmish markers to impose identification requirements and safety testing as per all other firearms imported into Australia. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items from entry or 'birth' into Australia and protected end users with safety tests. It will also define gel-ball blasters as firearms, bringing them under the Prohibited Import Regulations. This recognises the community safety risk from gel-ball blasters, particularly those that are near indistinguishable in appearance from automatic firearms.

673. Division 7 introduces a requirement for all importation of firearms to be limited to Australian citizens. Applying for Australian citizenship requires a significant commitment to Australian values and to meet the eligibility requirements, providing an additional layer of community protection.

674. Division 8 outlines importation requirements with respect to firearm sound suppressors and speed loaders. This division introduces a requirement to serialise sound suppressors and require visual inspection for the importation of sound suppressors. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items, which are desirable to criminal actors. This division also captures speed loaders, which can be used to rapidly reload a firearm, increasing the potential harm of a shooting incident as firearm accessories. Amendments will impose import requirements speed loaders, and limit importation to where it complies with one of the prescribed tests.

675. Division 9 sets out the application of the amendments contained in Part 5 of Schedule 6 to the Prohibited Imports Regulations.

Division 1—Assisted repeating action and straight pull repeating action firearms

Customs (Prohibited Imports) Regulations 1956

Item 133 Subregulation 2(1)

676. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert new definitions for "assisted repeating action" and "straight pull repeating action". This item signposts the meaning given to these new terms as defined in subregulation 4F(4).

677. This amendment enables the terms to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by item 134 of Part 5 of Schedule 2 to the Bill, when enacted, which give meaning to the new terms.

Item 134 Subregulation 4F(4)

678. This item amends subregulation 4F(4) of the Prohibited Imports Regulations to give meaning to the terms ***assisted repeating action*** and ***straight pull repeating action***.

679. Regulation 4F of the Prohibited Imports Regulations prohibits the importation of a firearm, a firearm accessory, a firearm part, a firearm magazine, ammunition, a component of ammunition, or an imitation firearm, unless the item is listed in Part 2 of Schedule 6 and the importation is in accordance with the requirements set out in column 3 of the item.

680. Subregulation 4F(4) sets out definitions of terms that are used in this regulation.

681. For the purposes of the Prohibited Import Regulations, a firearm is an ***assisted repeating action*** firearm if it operates with a self-opening repeating action, or a self-closing repeating action, and the cycle of operation of the firearm is partly automated.

682. For the purposes of the Prohibited Import Regulations, a firearm is a ***straight pull repeating action*** firearm if the firearm is operated by movement of a bolt or handle along a single linear axis (that is, without rotation).

683. The definitions inserted by this Item complement and give specific meaning to the amendments made by the other items in Part 5 of Schedule 2 relating to straight pull repeating action and assisted repeating action firearms. These firearms operate at a higher rate of fire than other firearms, and automate parts of the firearm cycle of operation. Because of this automation and high rate of fire, these firearms pose a risk to community safety and should be regulated consistently with semi-automatic firearms.

Item 135 Part 2 of Schedule 6 (table item 1, column 2, paragraph (c))

684. This item repeals paragraph (c) in column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new paragraph (c) that refers to a rimfire rifle, other than a semi-automatic rimfire file or an assisted repeating action or straight pull repeating action rifle.

685. Column 2 of the table sets out the specific firearms, firearm accessories, parts, magazines, ammunition, or components of ammunition or imitation firearms that are subject to the requirements provided for under column 3 under the relevant item.

686. Paragraph (c) in column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendment made by this item, refers to a rimfire rifle, other than a semi-automatic rimfire rifle.

687. The purpose of this amendment is to clarify importation requirements for rimfire rifles by specifically addressing rimfire rifles that do not meet the definition of semi-automatic rimfire rifle, or an assisted repeating action or straight pull repeating action rifle, as those items are now addressed separately. The importation of rimfire rifles that do not meet these definitions will continue to be subject to the tests identified in column 3 of table item 1 of Part 2 to Schedule 6.

Item 136 Part 2 of Schedule 6 (table item 2, column 2, paragraph (d))

688. This item repeals paragraph (d) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulation and substitutes a new paragraph (d) that refers to a repeating action centre fire rifle, other than an assisted repeating action or straight pull repeating action centre fire rifle.

689. Paragraph (d) of column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendment made by this item, refers to a repeating action centre fire rifle.

690. The purpose of this amendment is to clarify importation requirements for repeating action centre file rifles by specifically addressing repeating action centre file rifles that do not meet the new definitions of assisted repeating action or straight pull repeating action centre fire rifle, as those items are now addressed separately. The importation of repeating action centre file rifles will continue to be subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6.

Item 137 Part 2 of Schedule 6 (table item 2, column 2, paragraph (f))

691. This item repeals paragraph (f) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new paragraph (f) that refers to a repeating bolt action shotgun, other than assisted repeating action or straight pull repeating action shotgun.

692. Paragraph (f) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendments made by this item, refers to a repeating bolt action shotgun.

693. The purpose of this amendment is to clarify importation requirements for repeating bolt action shotguns by specifically addressing repeating bolt action shotguns that do not meet the new definitions of assisted repeating action or straight pull repeating action centre fire rifle, as those items are now addressed separately. The importation of repeating bolt action shotguns will continue to be subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6.

Item 138 Part 2 of Schedule 6 (table item 2, column 2, paragraph (g))

694. This item inserts the words “that is not an assisted repeating action or straight pull repeating action shotgun, and that is” after “lever action shotgun” in paragraph (g) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

695. Paragraph (g) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendments made by this item, refers to a lever action shotgun, either without a firearm magazine, or fitted with a firearm magazine having a capacity of no more than 5 rounds.

696. The purpose of this amendment is to clarify existing importation requirements for lever action shotguns by specifically addressing those that are not an assisted repeating action or straight pull repeating action shotgun, and that are either without a firearm magazine, or fitted with a firearm magazine having a capacity of no more than 5 rounds, the importation of the firearm is subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6 to the Prohibited Imports Regulations.

Item 139 Part 2 of Schedule 6 (table item 2, column 2, paragraph (ga))

697. This item repeals paragraph (ga) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This amendment is necessary as this item is now included as a separate item number in the table by item 140.

Item 140 Part 2 of Schedule 6 (at the end of table item 3, column 2)

698. This item inserts references to both an assisted repeating action or straight pull repeating action shotgun that is, either without a firearm magazine, or fitted with a firearm magazine of a capacity no greater than 5 rounds, and an assisted repeating action or straight pull repeating action rimfire rifle that is, either without a firearm magazine, or fitted with a firearm magazine of a capacity no greater than 10 rounds at the end of column 2 of table item 3.

699. The purpose of this amendment is to enhance restrictions on these firearms, and require their importation to satisfy the applicable tests set out in column 3 of table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. These tests are amended by items 141 and 142 of Part 5 of Schedule 2 to the Bill, when enacted.

700. This amendment aligns the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearm types.

Item 141 Part 2 of Schedule 6 (table item 3, column 3)

701. This item inserts assisted repeating action or straight pull repeating action rimfire rifle into column 3 of table item 3.

702. The purpose of this amendment is to expressly require the importation of an assisted repeating action or a straight pull repeating action rimfire rifle to satisfy the same tests as applicable to the importation of a semi-automatic rimfire rifle.

Item 142 Part 2 of Schedule 6 (table item 3, column 3)

703. This item inserts assisted repeating action or straight pull repeating action shotgun into column 3 of table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

704. The purpose of this amendment is to expressly require the importation of an assisted repeating action or a straight pull repeating action shotgun to satisfy the same tests as applicable to the importation of a repeating shotgun.

Item 143 Part 2 of Schedule 6 (table item 6, column 2, after paragraph (b))

705. This item inserts new paragraph (ba) after paragraph (b) of column 2 of table item 6 to expressly provide for the importation of an assisted repeating action or straight pull repeating action rimfire rifle fitted with a firearm magazine of a capacity greater than 10 rounds.

706. The effect of this amendment is that the importation of an assisted repeating action or straight pull repeating action rimfire rifle fitted with a firearm magazine of a capacity greater than 10 rounds will be required to satisfy the applicable tests for the goods in column 3 of table item 6.

707. The purpose of this amendment is to align the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearm types.

Item 144 Part 2 of Schedule 6 (table item 6, column 2, paragraph (da))

708. This item repeals paragraph (da) in column 2 of table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes with two new paragraphs, being new paragraphs (da) and (db). These new paragraphs address an assisted repeating action or straight pull repeating action shotgun fitted with a magazine capacity greater than 5 rounds (da), and an assisted repeating action or straight pull repeating action centre fire rifle (db).

709. The purpose and effect of this amendment is that the importation of these firearms will be required to satisfy the applicable tests for the firearms in column 3 of table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearms types.

Item 145 Part 2 of Schedule 6 (table item 15, column 2, paragraph (d))

710. This item repeals paragraph (d) in column 2 of table item 15 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes with a new paragraph (d), which covers assisted repeating action or straight pull repeating action shotguns.

711. The purpose and effect of this amendment is that the importation of the firearms mentioned will be required to satisfy the applicable tests for the firearms in column 3 of table item 15 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on magazines for semi-automatic versions of those firearm types.

Item 146 Part 2 of Schedule 6 (table item 16, column 2, after paragraph (c))

712. This item inserts new paragraphs (d) and (e) after paragraph (c) in column 2 of table item 16 in Part 2 of Schedule 6 of the Prohibited Imports Regulations to cover assisted repeating action or straight pull repeating action rimfire rifles, and assisted repeating action or straight pull repeating action centre fire rifles.

713. The purpose and effect of this amendment is that the importation of the firearm magazines mentioned will be required to satisfy the applicable tests for the firearm magazines in column 3 of table item 16 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on magazines for semi-automatic versions of those firearm types.

Item 147 Part 2 of Schedule 6 (cell at table item 16A, column 2)

714. This item repeals the cell in column 2 of table item 16A of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new cell to refer to a detachable firearm magazine (other than a firearm magazine to which table item 14A, 14B or 16 applies), having a capacity of more than 15 rounds, for repeating action centre-fire rifles, whether or not attached to a firearm.

715. The purpose and effect of this amendment is that the importation of the firearm magazines mentioned will be required to satisfy the applicable tests for the firearm magazines in column 3 of table item 16A of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for repeating action centrefire rifles other than those made by items 144 and 146.

Division 2—Belt feeders

Customs (Prohibited Imports) Regulations 1956

Item 148 Part 2 of Schedule 6 (table item 1, column 2, paragraph (e))

716. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (e) in column 2 of table item 1 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

717. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

718. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

719. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 149 Part 2 of Schedule 6 (table item 2, column 2, paragraph (h))

720. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (h) in column 2 of table item 2 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

721. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

722. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12 , which have stronger controls on their importation and use given the community safety risk they pose.

723. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 150 Part 2 of Schedule 6 (table item 3, column 2, paragraph (a))

724. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (a) in column 2 of table item 3 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

725. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

726. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

727. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 151 Part 2 of Schedule 6 (table item 6, column 2, paragraph (e))

728. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (e) in column 2 of table item 6 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

729. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

730. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

731. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this

places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 152 Part 2 of Schedule 6 (table item 9, column 2, paragraph (d))

732. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (d) in column 2 of table item 9 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

733. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

734. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

735. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Division 3—Magazines over 30 rounds

Customs (Prohibited Imports) Regulations 1956

Item 153 Part 2 of Schedule 6 (after table item 16A)

736. The purpose of Division 3 is to align the controls on magazines with more than 30 rounds with the agreed treatment provided for by the National Firearms Agreement. Magazines with more than 30 rounds capacity were not previously subject to import restrictions, other than restrictions that applied to specific types of magazines. This ensures magazines not already captured by Part 2 of Schedule 6 to the Prohibited Import Regulations are restricted appropriately.

737. This item inserts new table item 16B into the table under Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for importation requirements for detachable firearm magazines that have a capacity of more than 30 rounds (other than a firearm magazine to which table item 14A, 14B, 15, 16 or 16A applies), whether or not attached to a firearm.

738. For the importation of the goods for new table item 16B (column 2), column 3 of that table item provides that the importation must comply with at least one of either the official purposes test, the specified purposes test, the specified person test, or the returned goods test. The effect of this amendment is a higher restriction is placed on these magazines, and a limited number of tests available to importers to allow for their importation into the country.

Item 154 Part 2 of Schedule 6 (table item 17, column 2, paragraph (a))

739. This item amends paragraph (a) in column 2 of table item 17 to apply new item number 16B which has been inserted by item 153 above.

740. This is a consequential amendment that supports the amendments made by item 153 of Part 5 of Schedule 2 to the to the Bill, when enacted.

Division 4—Handguns

Customs (Prohibited Imports) Regulations 1956

Item 155 Paragraph 4.1(c) of Part 1 of Schedule 6

741. This item repeals the paragraph 4.1(c) of Part 1 of Schedule 6 to the Prohibited Imports Regulations, which provides for the requirements applicable to for an importation of an article to comply with the police certification test for category H articles.

742. The term ***category H article*** is already defined, for the purposes of Schedule 6, under item 3A of Part 4 of Schedule 6 to mean:

- a firearm mentioned in item 9 of Part 2 (other than a firearm that was manufactured before 1 January 1990); or

- a frame or receiver mentioned in item 9B of Part 2 (other than a frame or receiver that was manufactured before 1 January 1900).

743. The purpose of this amendment is to remove the current police certification authorisations for the importation of category H articles from state and territory policing. When enacted, with certification requirements removed as a form of permission for the importation of handguns, Division 4 will require Commonwealth import permission.

Item 156 Subparagraph 4.1(d)(ii) of Part 1 of Schedule 6

744. This item removes "or category H" in subparagraph 4.1(d)(ii), effectively removing the requirement for an importation of a category H article to produce to a Collector the statement in the approved form to comply with the police certification test.

745. The repeal of this paragraph is intended to require Commonwealth import permission for the importation of category H articles.

Item 157 Subitem 4.2 of Part 1 of Schedule 6

746. This item repeals subitem 4.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

747. This is a technical and consequential amendment that supports the repeal of paragraph 4.1(c) of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 155.

Item 158 Subitem 5.1 of Part 1 of Schedule 6

748. This item inserts category H articles with category C articles in subitem 5.1, which enables the sports shooter test to be a test that can be complied with for the importation of a category H article. This recognises that handguns are commonly used for sports shooting, and this should be an accepted reason for the importation of a category H article.

749. The purpose of this amendment is to remove the certification requirements from state and territory policing, requiring Commonwealth import permission for category H articles.

Item 159 Subitem 5.2 of Part 1 of Schedule 6 (note)

750. This item inserts category H articles with restricted category C articles in subitem 5.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

751. This is a technical and consequential amendment that supports inclusion of category H articles in subitem 5.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 155.

Item 160 Subitem 5A.1 of Part 1 of Schedule 6

752. This item inserts category H articles with category C articles in subitem 5A.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

753. This purpose of this amendment enables the international sports shooter test to be a test that can be complied with for the importation of a category H article. This recognises that handguns are commonly used for sports shooting, and this should be an accepted reason for the importation of a category H article.

754. The purpose of this amendment is to ensure national consistency and remove the certification requirements from state and territory policing, requiring Commonwealth import permission.

Item 161 Subitem 5A.2 of Part 1 of Schedule 6 (note)

755. This item inserts category H articles with restricted category C articles in subitem 5A.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

756. This is a technical and consequential amendment that supports inclusion of category H articles in subitem 5A.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 160.

Item 162 Item 6 of Part 1 of Schedule 6 (heading)

757. This item omits "—Category C and D articles" from item 6 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, and is a technical and consequential amendment that supports inclusion of category H articles in subitem 6.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 163 (below).

Item 163 Subitem 6.1 of Part 1 of Schedule 6

758. This item inserts category H articles with category D articles in item 6, and enables the dealer test to be a test that can be complied with for the importation of a category H article. This recognises that handguns may be imported into Australia by dealers for legitimate sale, and this should be an accepted reason for the importation of a category H article.

759. The purpose of this amendment is to ensure national consistency and remove the certification requirements from state and territory policing, requiring Commonwealth import permission.

Item 164 Subitem 6.2 of Part 1 of Schedule 6 (note)

760. This item inserts category H articles into subitem 6.2 of Part 1 of Schedule 6, and is a technical and consequential amendment that supports inclusion of category H articles in subitem 6.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 160.

Item 165 Item 7 of Part 1 of Schedule 6

761. This item repeals item 7 of Part 1 of Schedule 6 to the Prohibited Imports Regulations and substitutes the new item 7 to establish a handgun test for category H articles.

762. The purpose of this amendment is to introduce the requirements category H articles must comply with for the handgun test in order to obtain Commonwealth import permission. New subitem 7.1 provides that the importation of a category H article complies with the handgun test if, at or before importation, the Minister gives written permission under this item for the importation of the article. This allows for the new handgun test to be applied by the Minister, or their delegate, to the importation of a category H article either at or before importation. In practice, 'at or before importation' allows for flexibility where import permission is required and has not been sought prior to the good arriving for importation.

763. New subitem 7.2 provides that the Minister may give written permission for the importation of the article only if the Minister is satisfied that the importer is a certified buyer for the article, certified for business or occupational purposes for the article, a certified collector for the article, or is exempt from holding, or not required to hold, a licence for the article.

764. The note under new subitem 7.2 draws the reader's attention to particular definitions of phrases in subitems 7.1 and 7.2, and directs the reader to see Part 4 of Schedule 6.

765. The purpose of this amendment is to ensure there is a test that may be complied with for the importation of handguns under Commonwealth permission, and remove the certification requirements from state and territory policing.

Item 166 Part 2 of Schedule 6 (cell at table item 9, column 3)

766. This item repeals the cell at column 3 of table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, and substitutes with a new cell which removes "soft air handgun". This item updates the importation requirements for handguns to align with other amendments made by this Division, and ensure the new handgun test may be applied to their importation.

767. The removal of a reference to "soft air rifles" supports the amendments in Division 6 of Part 5 to the Bill to insert requirements relating to the importation of skirmish markers.

768. The removal of a reference to "soft air handguns" is required as the consolidated definition of "skirmish markers", as inserted under subregulation 4F(4) covers soft air

handguns, and any continued reference to soft air handguns in table item 9 is no longer necessary.

769. The new cell inserted by this item removes the police certification test for handguns, and updates the list of tests that importation of a handgun may comply with to include the handgun test, the sports shooter test, and the international sports shooter test. The police certification This recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission.

Item 167 Part 2 of Schedule 6 (table item 9B, column 3, paragraph (d))

770. This item repeals paragraph (d) in column 3 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes two new paragraphs, being new paragraphs (d) and (da) which cover the sports shooter test, and the international sports shooter test.

771. This amendment removes the police certification test from table item 9B as a test which may be applied to the importation of a frame or receiver for a handgun, and substitutes it with the sports shooter and international sports shooter test as tests that can be complied with for the importation of goods covered by column 2 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations may apply. This recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission.

772. The purpose of this amendment is to add additional tests that may be complied with for these items, and remove the certification requirements from state and territory policing.

Item 168 Part 2 of Schedule 6 (table item 9B, column 3, after paragraph (e))

773. This item inserts new paragraph (ea) after paragraph (e) in column 3 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations. New paragraph (ea) covers the handgun test.

774. This amendment introduces the handgun test as a test that can be complied with for the importation of frames or receivers covered by column 2 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations, including frames and receivers used in connection with handguns.

775. The purpose of this amendment is to add an additional test that may be complied with to meet importation requirements, and remove the certification requirements from state and territory policing.

Item 169 Part 2 of Schedule 6 (table item 10, column 3, paragraph (d))

776. This item repeals paragraph (d) in column 3 of table item 10 of Part 2 to Schedule 6 to the Prohibited Imports Regulations and substitutes new paragraphs (d), (da), (db), and (dc) which relate to the sports shooter test, the international sports shooter test, the dealer test, and the handgun test.

777. This amendment removes the police certification test and substitutes it with the sports shooter test, international sports shooter test, dealer test and the handgun test as tests that can be complied with for the importation of firearms covered by column 2 of table item 10. This item recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission. This item also supports other amendments made by this Division to insert the new handgun test and apply the dealer test to Commonwealth import permission for handguns.

778. The purpose of this amendment is to ensure national consistency, add additional tests that may be complied with and remove the certification requirements from state and territory policing.

Item 170 Part 2 of Schedule 6 (at the end of the cell at table item 17, column 3)

779. This item adds new paragraphs (f), (g) and (h) at the end of the cell at table item 17 of column 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

780. This amendment adds the sports shooter test, international sports shooter test, and the handgun test as tests that can be complied with for the importation of firearm magazines covered by column 2 of table item 17 of Part 2 of Schedule 6 to the Prohibited Imports Regulations may apply. This item recognises that handguns and their magazines are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handgun magazines under Commonwealth import permission. Similarly, this item also supports other amendments made by this Division to ensure the handgun test can be applied to Commonwealth import permission for these articles.

781. The purpose of this amendment is to ensure national consistency, add additional tests that may be complied with for Commonwealth import permission, and remove the certification requirements from state and territory policing.

Item 171 At the end of subitem 3A.1 of Part 4 of Schedule 6

782. This item amends subitem 3A.1 of Part 4 of Schedule 6 to the Prohibited Imports Regulations which provides for the meaning of a category H article. The amendment ensures that a firearm part covered by table item 10, and a firearm magazine covered by table item 17 of Part 2 of Schedule 6 of the Prohibited Imports Regulations are considered category H articles.

783. This amendment ensure handguns, and their parts and magazines, are all treated consistently at importation as category H articles, and require Commonwealth import permission.

Division 5—Frames and receivers

Customs (Prohibited Imports) Regulations 1956

Item 172 After paragraph 3E(1)(b)

784. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(ba) to cover frames and receivers. This provides for a more

streamlined requirement for the re-importation of these articles that were exported for use overseas, for example in lawful shooting competitions.

Item 173 Part 2 of Schedule 6 (after table item 2)

785. This item inserts new table item 2A into the table in Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for importation requirements for the importation of frames or receivers.

786. For the importation of these goods, column 3 of the new table item provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test; or
- the police certification test.

787. Additionally, column 3 of new table item 2A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

788. The purpose of this amendment is to set out the tests for importation of the firearm frames or receivers mentioned and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items.

Item 174 Part 2 of Schedule 6 (table item 2B, column 2)

789. This item makes a technical and consequential amendment that supports the insertion of new table item 2A, which specifically addresses the importation of a frame or receiver of, or for, a firearm to which item 1 or 2 applies. The amendment of item 2B is needed to give effect to the operation of new item 2A without doubling up on requirements for these items.

Item 175 Part 2 of Schedule 6 (after table item 3)

790. This item inserts new table item 3A to provide for the importation requirements for a frame or receiver of or for a firearm to which table item 3 of Part 2 of Schedule 6 to those Regulations applies.

791. For the importation of a frame or receiver of, or for, a semi-automatic rimfire rifle, column 3 of table item 3A provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;

- the specified person test;
- the police certification test;
- the dealer test; or
- the returned goods test.

792. For the importation of a frame or receiver of, or for, a semi-automatic shotgun or pump action repeating shotgun, column 3 of table item 3A provides that the importation must comply with at least or of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the police certification test;
- the sports shooter test;
- the international sports shooter test;
- the dealer test; or
- the returned goods test.

793. Additionally, column 3 of new table item 3A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

794. The purpose and effect of the amendments made by this item is to set out the tests for importation of the frames and receivers mentioned, and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 176 Part 2 of Schedule 6 (at the end of the cell at table item 4, column 2)

795. This item adds a new paragraph (c) at the end of the cell at table item 4 of column 2 which ensures that table item 4 no longer covers a frame or receiver for a firearm part of, or for, a firearm to which table item 3 applies. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 177 Part 2 of Schedule 6 (after table item 6)

796. This item inserts new table item 6A into the table in Part 2 of Schedule to provide for importation requirements for the importation of a frame or receiver of, or for, a firearm to which table item 6 applies.

797. For the importation of frames or receivers of firearms listed in table item 6 (including semi-automatic firearms), column 3 of new table item 6A provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the returned goods test; or
- the dealer test.

798. Additionally, column 3 of new table item 6A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

799. The purpose and effect of this amendment is to set out the tests for importation of the goods mentioned and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 178 Part 2 of Schedule 6 (at the end of the cell at table item 7, column 2)

800. This item adds a new paragraph (c) at the end of the cell at column 2 of table item 7 to ensure it no longer covers a frame or receiver for a firearm part of, or for, a firearm to which table item 6 applies, other than a firearm part. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 179 Part 2 of Schedule 6 (table item 7, column 3)

801. This item amends column 3 of table item 7 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove duplicative references to frames and receivers in this item. The phrase "For a frame or receiver to which item 1A of Part 3 of this Schedule applies, the frame or receiver must comply with the identification requirements set out in the item." is omitted to clarify that these items no longer need to comply with the requirements under item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations in addition to the tests set out in column 3 of table item 7.

Item 180 Part 2 of Schedule 6 (after table item 12)

802. This item inserts new table item 12A to provide for importation requirements for the importation of a frame or receiver of, or for, a firearm to which table item 12 applies.

803. For the importation of these items, column 3 of that table item provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the returned goods test.

804. Additionally, column 3 of new table item 12A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

805. The purpose and effect of this amendment is to set out the tests for importation of frames and receivers, and to ensure they are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 181 Part 2 of Schedule 6 (table item 13, column 2)

806. This item excludes frames or receivers from being covered by the importation test set out for the importation of goods covered by table item 13 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 182 Part 2 of Schedule 6 (table item 13, column 3)

807. This item omits the text "For a frame or receiver to which item 1A of Part 3 of this Schedule applies, the frame or receiver must comply with the identification requirements set out in the item". Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Division 6—Skirmish markers

Customs (Prohibited Imports) Regulations 1956

Item 183 Subregulation 2(1)

808. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert a new definition for "skirmish marker", which is signposted to have the meaning given by subregulation 4F(4) of those Regulations.

809. This amendment enables the term to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by item 186, which give meaning to the new term.

Item 184 After paragraph 3E(1)(g)

810. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(ga) to cover skirmish markers and their parts. This provides for a more streamlined requirement for the re-importation of these articles that were exported for use overseas, for example in lawful shooting competitions.

Item 185 Subregulation 4F(4) (at the end of paragraph (c) of the definition of *firearm*)

811. This item amends the definition of "firearm" under subregulation 4F(4) of the Prohibited Imports Regulations to insert new subparagraph (xiii).

812. The insertion of new subparagraph (xiii) operates to provide that a firearm, as defined in subregulation 4F(4), does not include a low power device that meets the requirements of a projectile toy under Consumer Goods (Projectile Toys) Safety Standard 2020, as in force from time to time.

813. The Consumer Goods (Projectile Toys) Safety Standard 2020 is accessible free of charge on the Federal Register of Legislation. This standard is exempt from sunsetting so its inclusion by name can be supported going forward. Additionally, standards that are set by the Australian Competition and Consumer Commission can be found freely and available to the public through the ACCC's website.

814. The purpose of this item is to clarify that low projectile toys and power projectile toys under the Consumer Goods (Projectile Toys) Safety Standard 2020 are not included in the definition of firearm for the purposes of the Prohibited Imports Regulations.

Item 186 Subregulation 4F(4)

815. This item inserts the definition of a "skirmish marker" into subregulation 4F(4) of the Prohibited Items Regulations. A skirmish marker means a firearm that is designed to fire plastic, polymer or hydrated superabsorbent polymer balls, darts, discs or similar projectiles of any material; and includes goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters.

816. This amendment complements the amendments made by item 191 of Part 5 of Schedule 2 to the Bill, when enacted, which refers to this term.

Item 187 Part 2 of Schedule 6 (table item 1, column 2, paragraph (b))

817. This item repeals paragraph (b) of column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove the reference to "soft air rifles" in that table item. This supports the amendments in Division 6 of Part 5 to the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air rifles, any continued reference to soft air rifles in table item 1 is no longer necessary.

Item 188 Part 2 of Schedule 6 (cell at table item 1, column 3)

818. This item repeals the cell at column 3 of table item 1, and substitutes with a new cell removing the requirements for soft air rifles.

819. The new cell, which applies in relation to the firearms mentioned in table item 1 (inserted by item 187), provides that the importation of the firearms mentioned must comply with one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the police certification test.

820. The removal of a reference to "soft air rifles" supports the amendments in Division 6 of Part 5 of Schedule 2 to the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air rifles, any continued reference to soft air rifles in table item 9 is no longer necessary.

Item 189 Part 2 of Schedule 6 (table item 9, column 2, paragraph (c))

821. This item repeals paragraph (c) at column 2 of table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove the reference to "soft air handgun" in that table item. This supports the amendments in Division 6 of Part 5 to the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air handguns, any continued reference to soft air handguns in table item 9 is no longer necessary.

Item 190 Part 2 of Schedule 6 (table item 12, column 2, paragraph (a))

822. This item omits "or 14A" in paragraph (a) of column 2 of table item 12 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, and substitutes with ", 14A or 14B".

823. This is a consequential amendment that supports amendments made by item 191 of Division 6 of Part 5 of Schedule 2 to the Bill, when enacted to insert requirements relating to the importation of skirmish markers and provide clarity as to which importation requirements apply.

Item 191 Part 2 of Schedule 6 (after table item 14A)

824. This item inserts new table item 14B into Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for the importation requirements for the importation of:

- skirmish marker, other than a skirmish marker that: is substantially the same in appearance as a fully automatic firearm; or to which a firearm accessory is attached or is integral;
- firearm part of, or for, a skirmish marker mentioned in new table item 14B;

- detachable firearm magazine (other than a gravity fed skirmish hopper) designed exclusively for use with a skirmish marker;

- plastic, polymer or hydratable superabsorbent polymer balls designed to be used as ammunition in a skirmish marker.

825. For the importation of the goods mentioned for new table item 14B (column 2), column 3 of that table item provides that the importation of the goods mentioned must comply with the police certification test.

826. Additionally, column 3 of the new table item provides that:

- for a firearm, frame or receiver to which item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations applies, the firearm, frame or receiver must comply with the identification requirements set out in item 1A;

for a firearm to which item 1 of Part 3 of Schedule 6 to the Prohibited Imports Regulations applies, the firearm must comply with the safety requirements set out in item 1.

827. Gel ball blasters, air soft firearms, and other skirmish markers are constructed using similar parts and fire similar types of ammunition, however they have not been treated consistently in the Prohibited Import Regulations. These amendments will treat these items the same under a single definition, which will support national consistency in dealing with these items as firearms for import purposes. The purpose and effect of this amendment is to set out the tests for importation of the goods mentioned.

828. This item amends how these firearms are treated at the border, however it does not control how these items are then regulated at the state and territory level.

Item 192 Part 2 of Schedule 6 (table items 15 and 16, column 2)

829. This item amends column 2 of table items 15 and 16 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to insert " or 14B" after "item 14A" to exclude goods covered by new table item 14B from table items 15 and 16.

830. The purpose of this amendment is to complement the insertion of new item 14B, which provides for the goods mentioned in that item, including detachable magazines, and provide clarity as to which importation requirements apply.

Item 193 Part 2 of Schedule 6 (table item 17, column 2, paragraph (a))

831. This item amends paragraph (a) in column 2 of table item 17 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to insert "14B," after "item 14A," to exclude goods covered by new table item 14B from table item 17.

832. The purpose of this amendment is to complement the insertion of new item 14B, which provides for the goods mentioned in that item, including magazines and provide clarity as to which importation requirements apply.

Division 7—Proof of citizenship

Customs (Prohibited Imports) Regulations 1956

Item 194 At the end of subitem 3.2 of Part 1 of Schedule 6

833. This item inserts new paragraph (c) at the end of subitem 3.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations to set an additional requirement in the specified persons test.

834. Subitem 3.2 of Part 1 of Schedule 6 sets out the circumstance under which the Minister may give permission for the importation of an article to which the specified persons test applies. Subitem 3.2 provides that the Minister may give written permission for the importation of the article only if the Minister is satisfied that:

- the importer of the article is a person whose occupation is partly or wholly the business of controlling vertebrate pest animals; and

- the importer holds a licence or authorisation, in accordance with the law of the State or Territory in which the importer will carry out that occupation, to possess the article for the purpose of carrying out that occupation.

835. New paragraph 3.2(c) operates to also require that the importer has produced evidence that the importer is an Australian citizen.

836. The purpose of this amendment is to limit importation of firearms to individuals who are Australian citizens. This recognises that, for Australia Citizens that applied, the citizenship application process provides an additional layer of community protection to complement fit and proper purposes test for firearms licences conducted by state and territory firearms registries. This amendment relates only to importation.

Division 8—Firearm sound suppressors and speed loaders

Customs (Prohibited Imports) Regulations 1956

Item 195 Subregulation 2(1)

837. This item inserts a definition of ‘speed loader’ into subregulation 2(1). This item provides that ***speed loader*** means a device covered by paragraph (d) of the definition of ***firearm accessory*** in subregulation 4F(4).

Item 196 After paragraph 3E(1)(f)

838. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(fa) to cover speed loaders. This provides for more streamlined requirements for the return to Australia of articles that were exported for use overseas, for example in lawful shooting competitions.

839. The inclusion of the new table item number for speed loaders in subregulation 3E(1) is not intended to capture a firearm accessory that does not meet the definition of speed loader. Other firearm accessories are not captured by this amendment, unless separately specified in subregulation 3E(1).

Item 197 Subregulation 4F(4) (before paragraph (f) of the definition of *firearm accessory*)

840. This item amends the definition of "firearm accessory" in subregulation 4F(4) of the Prohibited Imports Regulations to insert a new paragraph (d) such that any speed loaders, whether or not complete, damaged, temporarily or permanently inoperable, or unfinished, are also covered by that definition.

841. New paragraph (d) covers a device that holds multiple rounds of ammunition, other than ammunition mentioned in table item 14A or 14B of Part 2 of Schedule 6 to the Prohibited Imports Regulations, in alignment for the purpose of quickly reloading a firearm, a cylinder or a firearm magazine.

842. The new paragraph (d) of the definition of "firearm accessory" expressly excludes articles to which table items 14A and 14B of Part 2 of Schedule 6 to the Prohibited Imports Regulations apply. This exclusion in new paragraph (d) of the definition of "firearm accessory" is intended to have the net result of allowing the importation of all intended articles that could attach to articles to which table items 14A and 14B to be dealt with the importation requirements as set out in those table items.

843. Speed loaders are devices used for quickly reloading firearms and magazines. These devices hold multiple rounds (including cartridges for revolvers, self-loading pistols, rifles or shotgun shells) in alignment enabling the rounds to be inserted into a firearm's cylinder or magazine all at once. Speed loaders save both time and effort as these devices avoid each bullet needing to be loaded individually.

Item 198 Part 2 of Schedule 6 (at the end of the cell at table item 11, column 2)

844. The amendment will ensure that the requirements in table item 11 will not duplicate requirements on these items, as new table item 13A will specifically provide for the requirements for the importation of firearm accessories that are silencers, sound moderators, sound suppressors, or other similar device. New table item 13B will specifically provide for requirements for a firearm accessory that is a speed loader.

Item 199 Part 2 of Schedule 6 (after table item 13)

845. This item inserts new item 13A into Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for the importation requirements for a firearm accessory that is a silencer, sound moderator, sound suppressor or any other device designed to reduce, or capable of reducing, the noise of discharge of a firearm.

846. For the goods mentioned for new table item 13A (column 2), column 3 of that table item provides that the importation of the goods must comply with one of the following tests:

- the official purposes test;
- the specified purposes test;
- the returned goods test.

847. For the importation of the goods mentioned, the importation of the goods must also comply with the identification requirements set out in new item 1AA of Part 3 of Schedule 6 to the Prohibited Imports Regulations.

848. The purpose of this item is to ensure all sound suppressors require serial number and visual inspection on importation and enable them to be recorded and tracked within the National Firearms Register (NFR). Enhancing the identification requirements for sound suppressors on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

849. This item also inserts new item 13B into Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for the importation of speed loaders.

850. The effect of this amendment is to regulate the importation of speed loaders. Classifying speed loaders as a firearm accessory enables the appropriate import controls on these devises as outlined in table items 11 and 14 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. As a result of these amendments, importers of speed loaders would be required to comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the sports shooter test;
- the international sports shooter test; or
- the returned goods test.

Item 200 Part 2 of Schedule 6 (at the end of the cell at table item 14, column 2)

851. The amendment will ensure that the more general requirements in table item 14 will not duplicate requirements on these items. This amendment is necessary as new table item 13A will specifically provide for the requirements for the importation of firearm accessories that are silencers, sound moderators, sound suppressors, or other similar devices. New table item 13B will specifically provide for requirements for a firearm accessory that is a speed loader.

Item 201 After item 1A of Part 3 of Schedule 6

852. This item inserts new item 1AA in Part 3 of Schedule 6 to the Prohibited Imports Regulations to provide for identification requirements for silencers, sound moderators, and sound suppressors. New subitems 1AA(1) and 1AA(2) provide the identification and inspections requirements, including the type of serialisation.

853. The purpose of this item is to ensure all sound suppressors have serial numbers and undergo a visual inspection on importation and enable them to be recorded and tracked in the National Firearms Register. Enhancing the identification requirements for sound suppressors on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 202 After paragraph 3A.1(c) of Part 4 of Schedule 6

854. This item inserts the new table item number for speed loaders at 13B under the definition of ***category H article*** in Part 4 of Schedule 6 to the Prohibited Import Regulations. This enables the sports shooter tests to be a test that can be complied with for the importation of speed loaders. This recognises that these devices are commonly lawfully used by sports shooting, and this should be an accepted reason for their importation.

Division 9—Application of amendments made by this Part

Customs (Prohibited Imports) Regulations 1956

Item 203 At the end of regulation 22

855. This item amends regulation 22 of the Prohibited Imports Regulations to add new subregulation 22(3) that has the effect of clarifying the application of the amendments made by Part 5 of Schedule 2 to the Bill, when enacted.

856. New subregulation 22(3) provides that amendments to the Prohibited Imports Regulations, made by Part 5 of Schedule 2 to the Bill, when enacted, apply in relation to:

- any application for permission to import goods into Australia made at or after the commencement of that Part; and
- any application for permission to import goods into Australia made before that commencement that has not been finally decided; and
- any documentation given at or after that commencement to facilitate the importation of goods into Australia; and
- any documentation given before that commencement to facilitate the importation of goods into Australia, where the goods are imported into Australia on or after that commencement.

857. This application provision clarifies which goods may be subject to the amended importation requirements made by Part 5 of Schedule 2 following commencement of the Bill. The amended requirements will apply to all new import permission applications for firearms and weapons, and related goods, made at or after commencement, and all those applications that had not been finally decided before commencement. This ensures that all applications being considered at the time of commencement will have the same requirements applied, and will therefore be subject to the same importation considerations.

858. The application provision also applies in similar terms to documentation provided at or after commencement, or before commencement.

Part 6—Approved forms for police certification for firearms imports

859. The amendments contained in Part 6 of Schedule 2 to the Bill, when enacted, remove the use of open-ended permits for the police certification tests for the importation of lower category firearms (Category A and B equivalents) and weapons. The effect of these

amendments is that the importation of firearms can still be obtained through the use of a single permit for each import application.

Division 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 204 At the end of item 4 of Part 1 of Schedule 6

860. This item inserts new subitem 4.2 after subitem 4.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations. The purpose of the amendment is to cease allowing importation of firearms and related goods to which the police certification test applies, which rely on a statement given by a relevant police representative by completing form B709DA for lower category firearms (Category A and B equivalents), regardless of whether the statement was given to the importer before that day.

861. This amendment removes ongoing certification by state and territory police, and requiring certification for each import. This strengthens the framework by providing increased visibility of the specific goods being imported, and ensures consistency with contemporary government priorities and recent state and territory reforms. Open-ended, or ongoing, permits can be used support to import large quantities of goods over a long period of time (up to five years) with limited oversight of the specific items and their serial numbers intended for import.

Items 205-208

862. These items make amendments to complement and repeal paragraphs to give effect to removing ongoing certification by state and territory police, and requiring certification for each import.

Item 209 Item 6 of Part 1 of Schedule 13

863. This item amends item 6 to insert “6.1” before the words “The importation”. This amendment is made to complement the amendment made by item 210, which inserts new subitem 6.2 into Part 1 of Schedule 13 to the Prohibited Imports Regulations.

Item 210 At the end of item 6 of Part 1 of Schedule 13

864. This item adds new subitem 6.2 into item 6 of Part 1 of Schedule 13 to the Prohibited Imports Regulations. The purpose of the amendment made by this item is to cease allowing importation of weapons and weapons parts to which the police certification test applies that rely on a statement given by a police representative by completing form B709X, regardless of whether the statement was given to the importer before that day.

865. This amendment removes ongoing certification by state and territory police, and requiring certification for each import. This strengthens the framework by providing increased visibility of the specific goods being imported, and ensures consistency with contemporary government priorities and recent state and territory reforms. Open-ended, or ongoing, permits can be used support to import large quantities of goods over a long period of time (up to five years) with limited oversight of the specific items intended for import until importation occurs.

Division 2—Application provisions

Customs (Prohibited Imports) Regulations 1956

Item 211 At the end of regulation 22

866. This item inserts new subregulation 22(4) at the end of regulation 22 of the Prohibited Imports Regulations to set out the goods to which the amendments made by Part 6 of Schedule 2 to the Bill, when enacted, apply.

867. New subregulation 22(4) has the effect that the amendments of the Prohibited Imports Regulations, made by Part 6 of Schedule 2 to the Bill, apply in relation to:

- any documentation given at or after that commencement to facilitate the importation of goods into Australia; and

- any documentation given before that commencement to facilitate the importation of goods into Australia, where the goods are imported into Australia on or after that commencement.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

Division 1 – Main amendments

Criminal Code Act 1995

Item 212 – After Subdivision HA of Division 474 of the Criminal Code

868. This item would insert new Subdivision HB – Offences relating to use of carriage service for firearms and explosives manufacture material, into Division 474 of the Criminal Code. The new subdivision would contain new sections 474.45F to 474.45J.

869. The offences in new Subdivision HB would complement state and territory laws which criminalise the illicit manufacture of firearms and explosives, through the introduction of Commonwealth offences that target the handling of material which provides instruction or otherwise facilitates manufacture or modification of firearms, explosive devices, and associated things. This would capture, for example, files for 3D printing of firearms. Noting the significant harm of violent offending, including terrorism, that illicit firearms pose to the community, it is critical that this enabling material is criminalised to prevent this harm.

870. The new offences would not be intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory, as per the operation of section 475.1 of the Criminal Code. This would include similar State and Territory offences, such as offences for the possession, production or distribution of extremist or dangerous material, which would continue to operate alongside the offences in Subdivision HB. This approach would be consistent with the approach taken in other areas of criminal law, such as terrorism, fraud, computer crime, money laundering, drug offences and sexual servitude. It is intended that the offences would be investigated in accordance with the established division of responsibilities between Commonwealth, State and Territory law enforcement agencies.

871. Category A geographical jurisdiction, as outlined in section 15.1 of the Criminal Code, would apply to the offences in Subdivision HB through the operation of section 475.2. Category A geographical jurisdiction means that the offence applies to conduct that occurs wholly or partly in Australia or offending where the result occurs wholly or partly in Australia, the conduct is engaged in by an Australian. Category A geographical jurisdiction would also cover instances where an Australian citizen in another country engages in conduct that is an offence, even if that citizen's conduct does not constitute an offence in that other country and the results of that conduct do not affect Australia.

Section 474.45F Meaning of firearms and explosives manufacture material

872. New section 474.45F would set out the definition of ***firearms and explosives manufacture material***. It would provide that in order to constitute firearms and explosives manufacture material, material must satisfy the matters in either paragraph 474.45F(1)(a) or (b).

873. The definition of ***material*** in existing section 473.1 of the Criminal Code would apply to Subdivision HB. This provides that material includes material in any form, or combination of forms, capable of constituting a communication. The intention is for this term to capture a variety of formats including, but not limited to, text, audio, visual or audio-visual material, or a combination of these formats.

874. New paragraph 474.45F(1)(a) would provide that firearms and explosives manufacture material is material that provides instructions on the manufacture or modification of:

- a firearm, firearm accessory, firearm part, or firearm magazine (subparagraph 474.45F(1)(a)(i)); or
- an explosive or other lethal device (subparagraph 474.45F(1)(a)(ii)).

875. Alternatively, new paragraph 474.45F(1)(b) would provide that firearms and explosives manufacture material is also material that supports or facilitates the manufacture or modification of:

- a firearm, firearm accessory, firearm part, or firearm magazine (subparagraph 474.45F(1)(b)(i)); or
- an explosive or other lethal device (subparagraph 474.45F(1)(b)(ii)).

876. The definition of 'firearms and explosives manufacture material' is not intended to extend to material that provides instructions on how to safely use, operate, and maintain a firearm. This includes, for example, videos about dismantling a firearm or reloading ammunition, a manufacturer-supplied firearm manual that explains safe operation and maintenance, or an online article providing instructions on fitting scopes, adjusting sights, replacing grips, or installing other compliant accessories. This reflects the intention that the offences capture the illicit manufacture or modification of firearms, related parts, and explosives or other lethal devices. There would also be a defence available for individuals who access material for the purpose of maintaining, modifying, repairing or manufacturing a licenced firearm, firearm part or explosive or other lethal device in compliance with the conditions of their licence or permit (see new section 474.45J).

877. New subsection 474.45F(2) would have the effect that, even where material is reasonably considered to have multiple intended purposes, it can nonetheless meet the requirements in paragraphs 474.45F(1)(a) or (b), if the material is intended to do one or more other things. For example, a document might include instructions for modifying a firearm as part of broader discussion on historical weaponry or engineering principles. Even if the primary purpose of the material is educational or technical, the inclusion of instructions or guidance that could reasonably be used to manufacture or modify an illicit firearm or explosive means the material falls within the definition. This ensures that the offence cannot be avoided simply because the material has multiple purposes. The provision is designed to prevent individuals from relying on claims of alternative intention to circumvent the offences, noting that legitimate uses are protected through express defences in section 474.45J.

878. New subsection 474.45F(3) would clarify that material is also firearms and explosives manufacture material if:

- it is reasonable to consider the material together with other material (paragraph 474.45F(3)(a)); and

- were all of the material to be taken to be a single item of material, it would constitute firearms and explosives manufacture material under subsection 474.45F(1) (paragraph 474.45F(3)(b)).

879. New subsection 474.45F(3) means that the definition of firearms and explosives manufacture material could be satisfied by a collection of material where it would be reasonable to consider the material together. It is intended to recognise that a collection of material may have a different character than an individual piece of material considered in isolation. For example, a person might possess separate documents – one containing a diagram of firearms components, and another containing instructions for assembling the components. When considered separately, these documents alone may not meet the definition of firearms and explosives manufacture material. However, when reasonably considered together, they may clearly support or facilitate manufacture of a firearm. This provision ensures that a person would not be able to avoid criminal liability under new Subdivision HB by keeping different items of material separate to avoid the material meeting all the requirements in subsection 474.45F(1).

880. The requirement in paragraph 474.45(3)(a), that it is reasonable to consider two or more pieces of material together, is intended to safeguard against arbitrariness in determining whether other material should be considered together in a given situation. Matters that may be relevant to determining whether it is reasonable to consider two or more items of material together may include that the items of material are stored on a single device, shared with others in a single email or text message chain or uploaded as a single digital file. However, circumstances in which other material is stored or shared separately are not intended to automatically exclude the possibility that it would be reasonable to consider the material together. The matters relevant to making such a determination would be case dependant.

881. New subsection 474.45F(4) clarifies that material may still be considered firearms and explosives manufacture material even if it would not be possible to use the material to manufacture or modify:

- a functional firearm, functional firearm accessory, functional firearm part, or functional firearm magazine(paragraph 474.45F(4)(a)), or

- a functional explosive or other lethal device (paragraph 474.45F(4)(b)).

882. This would ensure that the definition of firearms and explosives manufacture material captures material that contains instruction or information relevant to weapon or explosive manufacture, regardless of whether following those instructions or information would result in a working or operable firearm, firearm accessory, firearm part, firearm magazine, or explosive or other lethal device, or an imitation of any of these items. For example, a document might provide steps for producing a firearm but omit critical specifications, meaning the resulting product does not fire; or a video might demonstrate how to assemble an explosive device but leave out key components, making the device inactive.

883. Material that facilitates the manufacture of imitations, such as replica firearms, poses a significant risk because it can be combined with other information or material to enable illicit manufacture. Replica weapons can also be used to intimidate or present a threat of harm or violence to the public.

884. New subsection 474.45F(5) would define key terms for the purposes of new Subdivision HB, including ***firearm***, ***firearm accessory***, ***firearm magazine*** and ***firearm part***. Each of these terms are defined to have the same meaning as in the Prohibited Imports Regulations:

- ***Firearm*** is defined as a device designed or adapted to discharge a projectile by means of an explosive charge or compressed gas. This includes rifles, pistols, shotguns and other weapons capable of firing projectiles.

- ***Firearm accessory*** is defined to include items designed to be attached to a firearm to enhance its function, such as silencers, scopes or mounts. These accessories can significantly increase the effectiveness or concealability of a weapon.

- ***Firearm magazine*** is defined as a container or device for holding and feeding ammunition into a firearm.

- ***Firearm part*** is defined as any component essential to the operation of a firearm, such as barrels, frames, receivers or triggers. These parts can be assembled into a working firearm even if other components are missing.

885. ***Explosive or other lethal device*** is defined in new subsection 474.45F(5) as having the same meaning as in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997 per section 72.1 of the Criminal Code. That Convention defines the term to include substances and devices intended to cause an explosion or lethal effect, including improvised explosive devices. The definition is broad and captures both commercial explosives and homemade devices.

886. Incorporating these definitions in this way would ensure consistency with existing Commonwealth legislation and international obligations - providing clarity for law enforcement agencies and the public. It also ensures that the scope of the offences comprehensively capture all relevant components and devices that could enable the

manufacture or modification of firearms or explosives, including parts, accessories and material that, when combined, could produce a functional weapon or explosive device.

Section 474.45G Using a carriage service for firearms and explosive manufacture material

887. New section 474.45G would set out the new offence for using a carriage service for firearms and explosive manufacture material.

888. To make out the offence, the prosecution must prove all of the following:

- the person accesses the material, or causes the material to be transmitted to the person, transmits, makes available, publishes, distributes, advertises, promotes or solicits material, or does any of the prior conduct in relation to a link that can be used to access the material (paragraph 474.45G(1)(a)),

- the person does so using a carriage service (paragraph 474.45G(1)(b)), and

- the material is firearms and explosives manufacture material (paragraph 474.45G(1)(c)).

889. The terms in new paragraph 474.45G(1)(a) are intended to cover a broad range of activities that a person could undertake in relation to firearms and explosives manufacture material which amount to dealing with the material or a link to the material via a carriage service. This would include actions a person takes with firearms and explosives manufacture material or an electronic link in relation to such material, and actions a person takes that enables others to engage with firearms and explosives manufacture material or an electronic link to that material. This would reflect the significant risk posed by the dissemination of such material given its potential to facilitate illicit weapon or explosive manufacture or production.

890. New subparagraph 474.45G(1)(a)(i) provides that a person commits an offence if they access firearms and explosives manufacture material. Section 473.1 of the Criminal Code defines access for the purpose of Part 10.6 (in which the new firearms and explosives manufacture material offences are located). The term includes the display of material by a computer or any other output of the material from a computer, or the copying or moving of the material to any place in a computer or to a data storage device.

891. ***Makes available*** in new subparagraph 474.45G(1)(a)(iii) is defined in the Criminal Code Dictionary as including, but not limited to, describing how to obtain access, or describing methods that are likely to facilitate access, to material (for example: by setting out the name of a website, a password or the name of a newsgroup). Other terms in paragraph 474.45G(1)(a) would take their ordinary meaning.

892. The offence treats dealing with an electronic link to material in the same manner as the material itself to recognise the mechanisms commonly used to deal with material through a carriage service. Dealing with an electronic link to the material, such as sending a hyperlink, is simply a method of dealing with the material itself which gives the recipient ready access to the material and will bring about the same impact. The offence has been crafted in such a way to capture both forms of conduct. New paragraph 474.45G(2)(a) would provide that the fault element attached to new paragraph 474.45G(1)(a) is intention. ‘Intention’ is defined in section 5.2 of the Criminal Code.

893. New paragraph 474.45G(1)(b) would require that the defendant used a carriage service in relation to the firearms and explosives manufacture material or an electronic link to the material. Using a carriage service (paragraph 474.45G(1)(b)) provides the relevant connection to the legislative power under paragraph 51(v) of the *Constitution*. The term 'carriage service' is defined in the Criminal Code Dictionary as having the same meaning as in the *Telecommunications Act 1997.* Use of a carriage services includes, but is not limited to, use of the internet, web pages, social media applications, email, chat forums, text messages and radio.

894. New subsection 474.45G(3) would provide that absolute liability, as outlined in section 6.2 of the Criminal Code, would apply to the matter in paragraph 474.45G(1)(b). Paragraph 474.45G(1)(b) sets out a jurisdictional element of the offence. A jurisdictional element is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not. The Guide provides that absolute liability should apply to jurisdictional elements.

895. New paragraph 474.45G(1)(c) would require that the material is firearms and explosives manufacture material. New section 474.45H would define firearms and explosives manufacture material. New paragraph 474.45G(2)(b) would provide that the fault element attached to paragraph 474.45G(1)(c) 'the material is firearms and explosives manufacture material', is recklessness. 'Recklessness' is defined in section 5.4 of the Criminal Code. By operation of this fault element, a person who accidentally comes across firearms and explosives manufacture material on the internet without any warning from the context would not be caught by the offence, because they would not have been reckless as to the nature of the material.

896. The offence would carry a maximum penalty of 5 years imprisonment. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. This could include, for example, material designed to support the private manufacture of an illicit firearm or explosive that is concealed or otherwise designed to avoid detection, for use in a terrorist attack. It is also appropriate noting the deterrent and early intervention objectives of the offence and would reflect the potential range of offending that may occur. The 5-year maximum penalty is consistent with existing offences for using a carriage service for violent extremist material.

Section 474.45H Possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service

897. New section 474.45H would create a new offence for the possession or control of firearms and explosive manufacture material in the form of data held in a computer or contained in a data storage device, where the person used a carriage service to obtain or access the material. The scope of the offence would include control of firearms and explosives manufacture material in the form of data, including material stored in remote data storage (including cloud hosting) that may be physically located in Australia or overseas due to the operation of paragraph 473.2(c) of the Criminal Code. The proposed offence would facilitate law enforcement to intervene before an illicit firearm is manufactured and used, reducing the risk of these items being used for acts of violence and enhancing the ability to disrupt potential threats before they escalate.

898. To make out the offence, the prosecution must prove all of the following:

- the person has possession or control of the material (new paragraph 474.45H(1)(a))
- the material is in the form of data held in a computer or contained in a data storage device (new paragraph 474.45H(1)(b))
- the person used a carriage service to obtain or access the material (new paragraph 474.45H(1)(c))
- the material is firearms and explosives manufacture material (new paragraph 474.45H(1)(d)).

899. Paragraph 474.45H(1)(a) requires that the person has possession or control of the material. Paragraph 474.45H(2)(a) clarifies that this intention applies as the fault element for this paragraph. Intention is defined in section 5.2 of the Criminal Code.

900. The meaning of the terms ***possession*** and ***control***, as used in paragraph 474.45H(1)(a), are clarified in section 473.2 of the Criminal Code. This includes control of data that is located on a remote data storage device, which may be in the physical possession of another person. To determine whether the defendant had control of the material, the prosecution must prove that the person had control of the material and the person intended to have control of the material.

901. New paragraph 474.45H(1)(b) requires that the material is in the form of data held in a computer or contained in a data storage device. The Criminal Code does not define 'computer'. References to 'computer' are intended to be broad enough to enable the offence to achieve and maintain technological neutrality, and to take into account technological advancements that could occur in the future.

902. The reference to ***data held in a computer*** in paragraph 474.45H(1)(b) is intended to be broad enough to enable the offence to achieve and maintain technological neutrality, and to take into account technological advancements that could occur in the future. The Criminal Code Dictionary defines 'data held in a computer' as:

- data held in any removable data storage device that is at the time being held in a computer, or
- data held in a data storage device on a computer network of which the computer forms a part.

903. The Criminal Code Dictionary defines ***data storage device*** as a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer. The reference to data contained in a data storage device includes where the data storage device is physically located in or outside of Australia.

904. New subsection 474.45H(3) would provide that strict liability, as outlined in section 6.1 of the Criminal Code, would apply to the matter in paragraph 474.45H(1)(b). The effect of applying strict liability to paragraph 474.45H(1)(b) would mean no fault element would need to be proven for that element of the offence, and defence of mistake of fact under section 9.2 of the Criminal Code would be available in relation to that element.

Requiring the prosecution to prove that the defendant knew or was reckless as to whether the material was in the form of data held in a computer or contained in a data storage device would undermine enforcement of the offence and deterrence of this conduct, as it would allow defendants to evade liability by remaining wilfully blind to the technical aspects of how the material, in the form of data, was stored.

905. New paragraph 474.45H(1)(c) would require that the material was obtained or accessed by the defendant by the use of a carriage service. The use of a carriage service provides the relevant connection to the legislative power under paragraph 51(v) of the Constitution. The term ***carriage service*** is defined in the Criminal Code Dictionary as having the same meaning as in the *Telecommunications Act 1997*. Use of a carriage service includes, but is not limited to, use of the internet, web pages, social media applications, email, chat forums, text messages and radio.

906. New subsection 474.45H(4) would provide that absolute liability, as outlined in section 6.2 of the Criminal Code, would apply to the matter in paragraph 474.45H(1)(c). Paragraph 474.45H(1)(c) sets out a jurisdictional element of the offence. A jurisdictional element is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not. The Guide provides that absolute liability should apply to jurisdictional elements.

907. New subsection 474.45H(5) would establish a presumption that where a defendant possesses or controls firearms and explosives manufacture material in the form of data held in a computer or contained in a data storage device, that material was obtained or accessed by the defendant using a carriage service. It would have the effect that, if the prosecution proves beyond reasonable doubt that the person had possession or control of material, the material is in the form of data held in a computer or contained in a data storage device, and the material is firearms and explosives manufacture material, it is presumed that the person used a carriage service to obtain or access the material. This presumption would stand unless the defendant proves that they did not obtain or access the material using a carriage service.

908. The purpose of this presumption would be to address problems encountered by law enforcement agencies in proving beyond reasonable doubt that a carriage service was used to engage in the relevant criminal conduct. Often, evidence that a carriage service was used to engage in the relevant criminal conduct is highly technical. Such evidence can be circumstantial, including for example that the defendant's computer had downloaded instructional manuals, the computer was connected to the internet, and records show the computer accessed websites that suggest an association with the material saved on the hard drive. A presumption in this instance is appropriate, given it is not an element that goes to the substance of the offence or to the person's criminal culpability. Rather, it is a jurisdictional element; that is, an element marking a boundary between matters that fall within the legislative power of the Commonwealth, and those that do not.

909. The onus would be on the defendant to prove that they used a method other than a carriage service to obtain or access the material. The prosecution would not need to prove that the person accessed or obtained the material using a carriage service beyond a reasonable doubt unless the defendant discharged their burden to prove otherwise.

910. The defendant would bear a legal burden of proof to rebut the presumption. In accordance with sections 13.4 and 13.5 of the Criminal Code, the defendant would be required to discharge this burden on the balance of probabilities. The defendant would be able to rebut the presumption by producing evidence demonstrating on the balance of probabilities that they did not use a carriage service to obtain or access the material.

911. The offence would carry a maximum penalty of 5 years imprisonment. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. This could include, for example, material designed to support the private manufacture of an illicit firearm or explosive that is concealed or otherwise designed to avoid detection, for use in a terrorist attack. It is also appropriate noting the deterrent and early intervention objectives of the offence and would reflect the potential range of offending that may occur. The 5-year maximum penalty is consistent with existing offences for possessing or controlling violent extremist material obtained or accessed using a carriage service.

Section 474.45J Defences in respect of firearms and explosives manufacture material

912. New section 474.45J would provide defences in respect of the new offences for using a carriage service for firearms and explosives manufacture material, and possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service. Each of the matters in subsections 474.45J(1) and (2) contain an individual defence, providing a circumstance in which the offence would not apply. These defences have been included to permit legitimate usage of firearms and explosives manufacture material.

913. New subsection 474.45J(1) would ensure that businesses and their employees who operate under State or Territory licences or permits are not inadvertently criminalised by the new offences in sections 474.45G and 474.45H. It would recognise that certain businesses require access to firearms and explosives manufacture material for lawful purposes such as manufacturing, repairing, maintaining or modifying firearms and explosives in compliance with the conditions of a licence or permit. Firearms regulation in Australia is primarily managed by the states and territories. Private manufacture of firearms is generally prohibited unless specifically authorised by a permit. In some jurisdictions, individuals may obtain a special licence for manufacture, maintenance, repair or modification. These licences are granted under strict conditions and are typically provided to businesses or professionals, not for personal use. Because these activities are essential to the functioning of regulated businesses and industries, the defence is intended to protect lawful industry practices to avoid disrupting essential operations of licensed businesses, while maintaining strict conditions that confine the defence to entities acting within the scope of their licence or permit.

914. Read together, new paragraphs 474.45J(1)(a) and (b) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply to a person who carries on a business in relation to firearms, firearms accessories, firearms parts, firearm magazines, or explosives or other lethal devices, or the person performing work for such a business; and that business holds a valid state or territory licence or permit authorising the manufacture, repair, maintenance or modification of those items. This would ensure that legitimate businesses and their employees are not inadvertently captured under the new offences, provided that they operate in accordance with a recognised license or permit scheme. The defence would be limited to individuals acting within a regulated business context, such

as business owners, employees and contractors who are licenced or permitted to carry out legitimate manufacture, repair, maintenance or modification of firearms.

915. The requirement that the person must be acting in connection with a business that deals with firearms and explosives and that business must hold a valid State or Territory licence or permit authorising the relevant activities ensures that the defence is intended to balance the need to prevent the misuse of firearms and explosives manufacture material with the need to support businesses who carry out legitimate activities in accordance with a licence or permit issued by a State or Territory. The defence is narrowly targeted at legitimate, regulated industry participants, and is intended to prevent individuals from relying on the defence simply because they work with firearms or explosives without the business itself being properly licenced. It would also prevent licensed businesses from relying on the defence for conduct unrelated to their authorised activities.

916. New paragraph 474.45J(1)(b) imposes a critical safeguard by requiring that the business owner referred to in paragraph 474.45J(1)(a) holds a licence or permit granted by a State or Territory authority. The licence must authorise the manufacture, repair, maintenance or modification of firearms, firearms accessories, firearms parts, firearm magazines, or explosives or other lethal devices, and it must be in force at the time the conduct was engaged in. The requirement for a licence or permit reflects the policy intention to exempt conduct that is engaged in in compliance with existing State and Territory regulatory schemes. Firearms and explosives are subject to strict controls which are primarily administered by States and Territories.

917. Licences under paragraph 474.45J(1)(b) may authorise other activities beyond manufacture, repair, maintenance or modification. For example, a licence may also permit the sale or distribution of firearms, firearm accessories, firearm parts, firearm magazines, or explosives or other lethal devices. The defence does not extend to activities outside the scope of the licence or to businesses that do not hold a valid authorisation to possess or control firearms and explosives manufacture material. However, where the licence includes additional authorised activities, the defence is intended to remain available provided the conduct relates to the licensed activities and satisfies the other conditions in subsection 474.45J(1). For example, a licensed dealer who also holds a permit to repair firearms could rely on the defence in subsection 474.45J(1) when accessing material for repair purposes, but not when accessing material for activities outside the conditions of the licence. This approach ensures flexibility for businesses operating under comprehensive licences while maintaining safeguards against misuse.

918. New paragraph 474.45J(1)(c) limits the defence to by providing that the material must relate to the things authorised under the licence. This would narrow the scope of the defence to material that is directly relevant to the licensed activities. For example, a licensed gunsmith accessing instructions for repairing a firearm would be covered, but accessing material about unrelated devices, such as explosives, would not. This safeguard is intended to narrow the defence so that it applies only to the matters within scope of the licence or permit referred to in paragraph 474.45J(1)(b).

919. New paragraph 474.45J(1)(d) further limits the defence to conduct engaged in in connection with the carrying on of a licenced business. This ensures that the defence only applies to legitimate business activities and not to personal or unauthorised use. It is intended to capture conduct that is reasonably necessary or incidental to the operation of the business, including accessing, transmitting or storing firearms and explosives

manufacture material on a business computer system for purposes directly related to manufacturing, repairing, maintaining or modifying firearms or explosives in compliance with the conditions of the licence or permit. It would also prevent individuals from avoiding criminal liability by claiming the defence for conduct that is unrelated to their professional role or licensed activities. For example, an employee accessing material for a repair job as part of their employment would be covered, but accessing the same material for private purposes, experimentation or resale outside the scope of the licence or permit would not. Similarly, a business owner who uses the material for activities beyond the authorised scope of the licence, such as creating unapproved devices or engaging in prohibited modifications, would not fall within the scope of the defence.

920. The note at the end of subsection 474.45J(1) would clarify that the defendant bears an evidential burden in relation to the matters in that subsection in accordance with existing subsection 13.3(3) of the Criminal Code. Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant would be required to present evidence suggesting a reasonable possibility that the defence applies.

921. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

922. The offence-specific defence in subsection 474.45J(1) recognise that the defendant's purpose in dealing with firearms and explosives manufacture material is uniquely within the knowledge of the defendant. They operate on the same principle as other 'lawful authority' defences in the Criminal Code and similar provisions in State and Territory legislation. The defendant is best placed to adduce evidence demonstrating their purpose. For example, a business owner or employee could readily produce a copy of the relevant State or Territory licence or permit and demonstrate that the conduct occurred in connection with the licenced business. Information of this nature is unlikely to be readily available or able to be obtained by the prosecution.

923. New subsection 474.45J(2) would ensure that individuals who engage in the conduct consistently with State or Territory licences or permits are not inadvertently criminalised by the new offences in sections 474.45G and 474.45H. It would recognise that persons who are licenced or otherwise permitted to maintain, modify, repair or manufacture firearms, explosives, and related items, should be able to lawfully possess material that supports the performance of those activities. Firearms regulation in Australia is primarily managed by the States and Territories, with licences granted under strict conditions. This defence is intended to ensure that essential activities which enable the proper and safe use of licenced firearms, explosives, and related items, are not captured by the offences.

924. New paragraph 474.45J(2)(a) imposes a critical safeguard by requiring that the individual holds a licence or permit granted by a State or Territory authority.

925. New paragraph 474.45J(2)(b) limits the defence by requiring that the material accessed or possessed must relate to their licence. This would narrow the scope of the defence to material that is relevant to the licensed activities. For example, an individual with a firearms licence accessing instructions about how to modify a firearm would be covered,

but accessing material about unrelated devices, such as the building and assembly of explosives which goes beyond what their licence permits, would not. This safeguard ensures that the defence only applies to information connected with the lawful activities authorised under the relevant state or territory licence referred to in paragraph 474.45J(2)(a).

926. The note at the end of subsection 474.45J(2) would clarify that the defendant bears an evidential burden in relation to the matters in that subsection in accordance with existing subsection 13.3(3) of the Criminal Code. Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant would be required to present evidence suggesting a reasonable possibility that the defence applies.

927. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

928. The offence-specific defence in subsection 474.45J(2) recognises that the defendant's purpose in dealing with firearms and explosives manufacture material is uniquely within the knowledge of the defendant. They operate on the same principle as other 'lawful authority' defences in the Criminal Code and similar provisions in State and Territory legislation. The defendant is best placed to adduce evidence demonstrating their purpose. For example, a business owner or employee could readily produce a copy of the relevant State or Territory licence or permit and demonstrate that the conduct occurred in connection with the licenced business. Information of this nature is unlikely to be readily available or able to be obtained by the prosecution.

929. New subsection 474.45J(3) would provide additional defences in respect of the offences for using a carriage service for firearms and explosives manufacture material, and possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service.

930. New paragraph 474.45J(3)(a) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for enforcing a law of the Commonwealth, a State or Territory, a foreign country or a part of a foreign country. This is intended to avoid situations where a conflict of laws requires the material to be handled in a particular way, which would be criminal under the new offences, but is necessary to assist in the enforcing of a law. Paragraph 474.45J(3)(a) would resolve this conflict in favour of supporting the enforcement of the other law.

931. New paragraph 474.45J(3)(b) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory, a foreign country, or part of a foreign country. This is intended to ensure that the offences do not compromise legitimate law enforcement procedures or operations. For example, it may be necessary for a person to maintain access to firearms and explosives manufacture material in a situation where access may assist in identifying the perpetrators of the conduct in relation to firearms and explosives manufacture material.

932. New paragraph 474.45J(3)(c) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for the purposes of proceedings in a court or tribunal. This is intended to serve as a safeguard to ensure a court or tribunal's access to material is not restricted by the operation of the new offences. The defence would ensure, for example, that a court or tribunal can have access to anything that meets evidential requirements, and that the offences in subsection 474.45G(1) and 474.45H(1) do not restrict this access.

933. New paragraph 474.45J(3)(d) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for, or of assistance in, conducting scientific, academic or historical research and the conduct is reasonable in the circumstances for the purpose of conducting that research. For example, this may include where the material is included in an academic paper presenting research that has been conducted into the use and impact of firearms and explosives manufacture material.

934. New paragraph 474.45J(3)(e) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is in connection with the performance by a public official of that official's duties or functions and the conduct is reasonable in the circumstances for the purpose of performing those duties or functions. For example, it may be necessary for a public official to maintain access to firearms and explosives manufacture material as part of their role as a security or intelligence officer.

935. New paragraph 474.45J(3)(f) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions and the conduct is reasonable in the circumstances for the purpose of assisting the public official in relation to the performance of the public official's duties or functions. This could include, for example, where the conduct is in connection with a person assisting a security or intelligence officer with the performance of the security or intelligence officer's official duties or functions.

936. The note at the end of subsection 474.45J(3) would clarify that the defendant bears an evidential burden in relation to the matters in that subsection in accordance with existing subsection 13.3(3) of the Criminal Code. Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant would be required to present evidence suggesting a reasonable possibility that the defence applies.

937. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

938. The offence-specific defences in subsection 474.45J(3) recognise that the defendant's purpose in dealing with firearms and explosives manufacture material is uniquely within the knowledge of the defendant. Many of these defences operate on the same principle as other 'lawful authority' defences in the Criminal Code and similar provisions in State and Territory legislation. The defendant is best placed to adduce evidence demonstrating the purpose of their conduct. For example, if the defendant is a forensic scientist conducting

academic research into the chemical composition of explosives for public safety purposes, they could readily adduce evidence that their access to firearms and explosives manufacture material was necessary for scientific research and reasonable in the circumstances for the purpose of conducting that research. This evidence might include research protocols, ethics approvals or correspondence with a government agency commissioning the study. Information of this nature is uniquely within the defendant's knowledge and unlikely to be readily available or able to be obtained by the prosecution.

939. New subsection 474.45J(4) would clarify that it is not intended that the meaning of the terms 'duty' or 'duties', when used in any provision of the Criminal Code other than new section 474.45J, would be affected by the references to 'function' or 'functions' in subsection 474.45J(3). The references to 'function' or 'functions' in subsection 474.45(3) – in particular, paragraphs 474.45J(3)(e) and (f) – are intended to inform the meaning of 'duty' or 'duties' for the purposes of subsection 474.45J(3) only.

Item 213 Subsections 475.1A(1) and (2) of the *Criminal Code*

940. This item would amend subsections 475.1A(1) and (2) to provide that the defences in section 475.1A also apply to the offences in new Subdivision HB. These defences provide that National Relay Service employees and emergency call persons are not criminally responsible for specific conduct if they engage in that conduct in good faith in the course of the person's duties. The amendments are intended to make clear that such persons would not commit the offences in new sections 474.45G or 474.45H when simply performing their job.

941. The National Relay Service provides a service for persons who are deaf or have a hearing and/or speech impediment. It facilitates calls with a voice and/or text component between the parties to the call.

Item 214 Dictionary in the *Criminal Code*

942. This item would insert the term 'firearms and explosives manufacture material' into the Criminal Code Dictionary and provide that section 474.45F defines this term.

Item 215 Transitional provision

943. The effect of this item would be that, for the purposes of the offence of possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service (new section 474.45H), it does not matter whether the person's use of a carriage service to obtain or access material occurred before, on, or after the commencement of the offence provisions. In other words, if a person used a carriage service to obtain or access firearms and explosives manufacture material before the offence provisions commenced, but they continue to possess or control the material after the provisions commence, they could be prosecuted for the offence. Further, the offences have a delayed commencement of 28 days, which will allow sufficient time for anyone in possession of this material to dispose of it.

944. The offence would however not apply retrospectively. Circumstances in which the possession or control of firearms and explosives manufacture material occurred wholly before the commencement of the offence provisions and have ceased to exist, would not be captured by the offence.

Division 2—Consequential amendments

Crimes Act 1914

Item 216 At the end of subsection 15GE(3)

945. This item would amend subsection 15GE(3) of the Crimes Act to explicitly provide that an offence against new Subdivision HB of Division 474 of the Criminal Code is a 'serious Commonwealth offence' for the purpose of Part IAB (controlled operations) of the Crimes Act.

SCHEDULE 3 – TRANSITIONAL RULES

Item 1 Transitional rules

946. Schedule 3 would allow for the Minister administering the *Australian Federal Police Act 1979*, the Minister administering the ART Act, or the Minister administering Part XII of the Customs Act, to, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act. The effect of this is to allow for a smooth transition to manage the shift from the old legislative framework to the new one. The transitional rules are broad in nature to allow flexibility in responding to practical issues that may arise during implementation. For example, transitional rules may clarify how pending applications, ongoing investigations or processes under previous legislation are to be treated under the proposed legislation.

947. The Schedule also ensures subsection 12(2) of the *Legislation Act 2003* (Retrospective application of legislative amendments) does not apply in relation to rules made under this item before the end of the period of 12 months starting on the day this item commences. Subsection 12(2) ordinarily prevents legislative instruments from applying retrospectively if doing so would disadvantage or impose liabilities on someone, however it is appropriate for the Bill to be excluded from this to ensure a smooth transition to the new proposed legislative framework. The 12-month period reflects the intention that these rules are temporary transitional rules.

948. To avoid doubt, the transitional rules may also not create an offence for civil penalty, provide powers of arrest or detention, or entry, search or seizure, impose a tax, set an amount to be appropriate from the Consolidated Revenue Fund under an appropriation in this Act or directly amend the text of the Bill. This has been inserted to act as a safeguard to ensure that it is clear on the face of the legislation that the relevant Minister cannot create rules for such things.